

No. 10531

United States
Circuit Court of Appeals
For the Ninth Circuit.

Vol
2353

INVESTMENT AND SECURITIES COMPANY,
a corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Eastern District of Washington

Northern Division

FILED

SEP 24 1943

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

WITHERSPOON, WITHERSPOON &
KELLEY,

Peyton Building, Spokane, Washington
Attorneys for Investment and Securities
Company, a corporation,—Intervening
Plaintiff.

THOMAS A. E. LALLY,

Paulsen Building, Spokane, Washington
Attorney for Charles P. Robbins, Share-
holders' Agent of The Shareholders of
the Exchange National Bank of Spo-
kane, Washington, — Cross-Defendant
and Interpleader

EDWARD M. CONNELLY,

United States Attorney,

HARVEY ERICKSON,

Assistant United States Attorney,
Federal Building, Spokane, Washington
Attorneys for Frank J. Kuhl, Collector of
Internal Revenue for Wisconsin,—De-
fendant, and
United States of America—Additional In-
tervenor

In the United States District Court for the Eastern
District of Washington, Northern Division

No. 235

In Equity

CHARLES P. ROBBINS, Shareholders' Agent
for the Shareholders of Exchange National
Bank of Spokane, Washington, an insolvent
national banking association,

Complainant.

COMPLAINT FOR INTERVENTION

Comes now complainant, Charles P. Robbins, and
respectfully shows the Court:

I.

That at all times herein mentioned he was and
now is the duly elected, qualified and acting Share-
holders' Agent of the shareholders of Exchange Na-
tional Bank of Spokane, Washington, an insolvent
national banking association, and a resident of the
above district;

That during said times Judson G. Rosebush, a
resident of the State of Wisconsin, was and now
is a shareholder in said association;

That Investment and Securities Company is a
corporation organized under the laws of the State
of Washington, with its principal place of business
in and a resident of Spokane, Washington.

II.

That your complainant is indebted to the said
Judson G. Rosebush, on account of dividends pay-

able to shareholders, in the sum of Four Thousand Two Hundred and Fifty Dollars (\$4250.00), with possible additional sums payable to him hereafter.

III.

That said Investment and Securities Company has served written notice on your complainant that the said Judson G. Rosebush has assigned to it by written assignment all moneys payable to him from your complainant and said corporation has demanded that your complainant pay said sum to it and has threatened to sue your complainant if he does not do so. [1*]

IV.

That E. J. Koelzer, Assistant United States Attorney at Milwaukee, Wisconsin, has had the United States Marshal for the Eastern District of Washington, Northern Division, serve on your complainant, on December 1, 1941, an alleged Fieri Facias, allegedly issued by the Clerk of the United States District Court for the Eastern District of Wisconsin under date of November 27, 1941, and which commands the said Marshal to levy upon the "goods and chattels, lands and tenements" in his district of the said Judson G. Rosebush on account of an alleged debt of \$37,220.85;

That said Writ of Fieri Facias does not allege the exact nature of the said debt, but your complainant is informed it is due the United States by reason of unpaid income tax.

*Page numbering appearing at foot of page of original certified Transcript of Record.

V.

That your complainant herewith deposits into the registry of this Court the said sum of Four Thousand Two Hundred and Fifty Dollars (\$4250.00) to be disposed of by the order or decree of this court.

VI.

That if complainant pays said sum to any one of said parties, he is informed and believes, and on information and belief alleges that he will be sued by the other party or parties.

VII.

That the sum of Two Hundred and Fifty Dollars (\$250.00) is a reasonable sum to be allowed complainant, as attorney fee together with his costs from said parties and from said sum herein.

Wherefore, your complainant prays the Court for an order of injunction enjoining the said Investment and Securities Company and enjoining the United States Attorney and his deputies at Milwaukee, Wisconsin from instituting any suit or legal proceedings in any court against your complainant to recover said \$4250.00, except permitting them to appear herein and plead for cause of action therefor; [2]

That process issue herein under the direction of this Court, directed to the said Investment and Securities Company and to the said United States Marshal returnable at such time as the Court may determine, that a hearing be had thereafter on the causes of action and facts to be pleaded by the said

parties and that thereupon the Court make said injunction permanent and relieve this complainant from further liability as to the payment of said \$4250.00 and any other sums that may be hereafter payable to the said Judson G. Rosebush, and that complainant be awarded reasonable attorney's fees and his costs herein.

THOS. A. E. LALLY

Attorney for Complainant

1123 Paulsen Building

Spokane, Washington

State of Washington,
County of Spokane—ss.

Charles P. Robbins, being first duly sworn, upon oath deposes and says:

That he is the Shareholders' Agent named in the foregoing petition and complaint; that he has read the same, knows the contents thereof, and the same is true as he verily believes.

(Notarial Seal)

CHARLES P. ROBBINS

Subscribed and sworn to before me this 2nd day of December, 1941.

THOS. A. E. LALLY

Notary Public in and for the State of Washington,
residing at Spokane.

[Endorsed]: Filed Dec 2 1941. [3]

[Title of Court and Cause.]

SPECIAL APPEARANCE AND PLEA TO
QUASH FOR LACK OF JURISDICTION

Comes now the United States of America by Lyle Keith, United States Attorney for the Eastern District of Washington, and Harvey Erickson, Assistant United States Attorney for said district, appearing herein specially, for the purpose of this motion only and for no other purpose, and moves the Court to quash the proceedings as to the United States of America for the following reasons, to-wit:

(1) The filing of the suit in the Eastern District of Washington by Charles P. Robbins, Shareholders' Agent for the Shareholders of Exchange National Bank of Spokane, Washington, an insolvent national banking association, constitutes an unwarranted and improper interference with the jurisdiction and processes of the United States Court for the District of Wisconsin, which, having issued the writ of execution, is entitled to determine whether or not it has reached the funds in question held by the said Charles P. Robbins, Shareholders' Agent for the Shareholders of Exchange National Bank of Spokane, Washington, an insolvent national banking association.

(2) The United States Marshal at Spokane must make his return to the United States District Court for the District of Wisconsin at Milwaukee, showing that he has attached the fund of 4250.00; therefore the jurisdiction of the subject matter of this litigation is in the United States District Court for the District of Wisconsin to determine the alleged

and conflicting claims to the fund, and the United States District Court of the District of Wisconsin has jurisdiction to settle the rights of all parties.

(3) The United States District Court for the Eastern District of Washington does not have jurisdiction over the United States Attorney and his assistants in the District of Wisconsin, and the United States District Court for the Eastern District of Wash- [4] ington is entirely without jurisdiction to entertain proceedings before it or grant any relief therein by way of attorney's fees, costs, or otherwise incurred in the above-entitled proceeding.

Therefore the United States District Court for the Eastern District of Washington, Northern Division, cannot and should not take further cognizance of the said action.

LYLE KEITH

United States Attorney

HARVEY ERICKSON

Assistant United States
Attorney

Service Accepted and Copy Received this 10th
day of February, 1942.

THOS. A. E. LALLY

Atty. for C.P.R.

[Endorsed]: Filed Feb 10 1942. [5]

[Title of Court and Cause.]

ORDER DENYING MOTION TO QUASH

Motion of United States of America by Lyle

Keith, United States Attorney for the Eastern District of Washington, and Harvey Erickson, Assistant United States Attorney for said District, having been made by way of Special Appearance and to quash the proceedings for lack of jurisdiction, and the Court being advised in the premises,

It Is Hereby Ordered That said Motion be and it is hereby denied.

Dated this 2nd day of April, 1942.

L. B. SCHWELLENBACH
Judge

Presented by

W. V. KELLEY

Approved as to form

HARVEY ERICKSON
Asst. U. S. Atty.

[Endorsed]: Filed Apr 2 1942. [6]

[Title of Court and Cause.]

MOTION TO FILE COMPLAINT IN INTER-
VENTION AND PETITION FOR DEC-
LARATORY RELIEF

Investment and Securities Co., a corporation organized under the Laws of the State of Washington, with its principal place of business in and a resident of Spokane, Washington, moves for leave to file a Complaint in Intervention and Petition for Declaratory Relief in this action, in order to

assert its claims and title to property and moneys as set forth in its proposed Complaint, of which a copy is hereto attached, on the ground that it is the owner of said property and moneys in excess of \$4250.00 deposited by Charles P. Robbins, Shareholders' Agent for Shareholders of Exchange National Bank of Spokane, Washington, an insolvent national banking association, with the Clerk of this Court, and which the Collector of Internal Revenue for Wisconsin has wrongfully attempted to seize by the service on said Robbins on December 1, 1941, of an alleged Fieri Facies allegedly issued by the Clerk of the United States District Court for the Eastern District of Wisconsin, under date of November 27, 1941, which commands the United States Marshall for the Eastern District of Washington, Northern Division, to levy upon said property and moneys on account of an alleged debt of \$37,230.85 allegedly owing to said Collector by one Judson G. Rosebush, a citizen of Wisconsin, and as such owner of said properties and moneys has a claim of superior right, title and interest to the property on which is sought to be levied the alleged tax lien against said Judson G. Rosebush presenting questions of law and of fact which are common and germane to the main action.

WITHERSPOON, WITHER-
SPOON & KELLEY

By W. V. KELLEY

Attorneys for Investment and
Securities Co.

[Endorsed]: Filed Mar 9 1942. [7]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division

No. 235

INVESTMENT AND SECURITIES CO., a cor-
poration,

vs.

CHARLES P. ROBBINS, Shareholders' Agent
for Shareholders of Exchange National Bank
of Spokane, Washington,

Cross-defendant,

and

FRANK J. KUHL, Collector of Internal Revenue
for Wisconsin,

Defendant.

ORDER FOR INTERVENTION

Complaint in Intervention and Petition for Declaratory Relief of Investment and Securities Co., a corporation, having been presented to the above entitled Court, and leave asked to file the same as its Complaint in Intervention and Petition for Declaratory Relief herein, and it appearing that good cause exists therefor.

It Is Hereby Ordered That leave be and it is hereby granted to file said Complaint in Intervention and Petition for Declaratory Relief and that Investment and Securities Co., a corporation, be permitted to intervene in the above entitled action.

It Is Further Ordered That Page 2, paragraph

VI, line 6 of said paragraph, may be amended by interlineation through the substitution of the word "Wisconsin" for the word "Washington" as alleged so that the amended line 6 of said paragraph shall read "District Court for the Eastern District of Wisconsin".

Dated this 2nd day of April, 1942.

L. B. SCHWELLENBACH
Judge

Presented by W. V. Kelley.

Approved as to form

HARVEY ERICKSON
Asst. U. S. Atty.

[Endorsed]: Filed Apr 2 1942. [8]

[Title of Court and Cause.]

COMPLAINT IN INTERVENTION AND PETITION FOR DECLARATORY RELIEF

Comes now complainant and petitioner, Investment and Securities Co., and respectively shows the Court:

I.

That at all times herein mentioned it was and now is a corporation organized and existing under and by virtue of the Laws of the State of Washington and has paid its annual state corporation fee last due and has its principal place of business in and is a resident of Spokane, Washington.

II.

That during said times, cross-defendant, Charles P. Robbins was and now is the duly elected, qualified and acting Shareholders' Agent of the Shareholders of Exchange National Bank of Spokane, Washington, an insolvent national banking association and is also a resident of the above district.

III.

That during said times one Judson G. Rosebush, a resident of the State of Wisconsin, was and now is a shareholder of the Exchange National Bank of Spokane, Washington, an insolvent national banking association.

IV.

That defendant, Frank J. Kuhl, is the Collector of Internal Revenue for Wisconsin and as such is an officer of the United States of America.

V.

That said Exchange National Bank of Spokane is indebted to the said Judson G. Rosebush on account of dividends payable to shareholders in the sum of \$4,250.00 with possible additional sums payable to said Rosebush hereafter.

VI.

That defendant, Frank J. Kuhl, as Collector of Internal Revenue for Wisconsin, has procured through the United States Marshal [9] for the Eastern District of Washington, Northern Division, service on said cross defendant Charles P. Robbins on December 1, 1941, of an alleged Fieri

Facies allegedly issued by the Clerk of the United States District Court for Eastern District of Wisconsin, under date of November 27, 1941, which commands the said Marshall to levy upon certain "goods and chattels, lands and tenements" in his district of the said Judson G. Rosebush on account of an alleged debt of \$37,220.85 which your complainant is informed is due the United States by reason of unpaid income tax.

VII.

That your complainant and petitioner does not challenge the validity of any tax imposition on said Judson G. Rosebush by said defendant Collector of Internal Revenue for Wisconsin.

VIII.

That at the time said Exchange National Bank of Spokane failed on January 18, 1929, said Judson G. Rosebush was the owner of 250 shares of the capital stock of said Bank; that by reason thereof said Judson Rosebush paid to the Receiver of said Bank assessments on said stock totalling \$25,000.00, which payments were made as follows:

October 5, 1929	\$ 5,000.00
December 12, 1929	5,000.00
February 3, 1930	5,000.00
June 2, 1930	10,000.00
March 25, 1931 interest on de-	
ferred payments	\$1,590.20;

That subsequently cross defendant, Charles P. Robbins, as Shareholders' Agent of said Bank, has paid certain liquidating dividends to other shareholders

who paid their super added liability but that he has withheld payments owing to said Judson G. Rosebush and that the payments to which said Rosebush was entitled are as follows:

July 5, 1940	7%	\$1,750.00
December 20, 1940	4%	1,000.00
November 10, 1941	6%	1,500.00

that your complainant and petitioner is informed and believes and therefore alleges it to be a fact that a further and final liquidating dividend of said Bank will be made during the year 1942. [10]

IX.

That on July 27, 1937, said Judson G. Rosebush assigned to complainant and petitioner, Investment and Securities Co., for a good and valuable consideration, any recovery which might be made by him or on his behalf on account of the assessment paid by him on stock of said Exchange National Bank of Spokane; that said Assignment was contained in a written Agreement, the pertinent part of which reads as follows:

“The party of the second part further agrees to and does hereby assign to party of the first part as security to the balance of indebtedness owing by the party of the second part to party of the first part any recovery which may be made by or on behalf of party of the second part from or on account of an assessment paid on stock of Exchange National Bank, Spokane, Washington, and further agrees to make, execute and deliver to party of the first part any

further instruments or documents necessary, needful and proper to make this assignment for collateral purposes effective and to enable party of the first part to recover any amounts which may or shall be due by reason of the payment of such assessments on said Exchange National Bank stock. It is understood that the Collector of Internal Revenue has filed an Order of Distrainment against party of the second part and that this assignment is subsequent and junior to any lien against said recovery that said Collector of Internal Revenue may have acquired by virtue of such Order of Distrainment.”

X.

That said Assignment was served upon said cross-defendant, Charles P. Robbins, by your complainant and petitioner on March 14, 1938; that said Charles P. Robbins has withheld the above payments mentioned in paragraph 8 because of the statement contained in the assignment reading as follows:

“It is understood that the Collector of Internal Revenue has filed an Order of Distrainment against the party of the second part and that this assignment is subsequent and junior to any lien against said recovery that said Collector of Internal Revenue may have acquired by virtue of such order of Distrainment.”

XI.

That neither said defendant, Collector of Internal Revenue for Wisconsin nor the United States of

America established any tax lien against said Judson G. Rosebush as taxpayer with respect to said moneys and property in the custody of said cross-defendant, [11] Charles P. Robbins, prior to said assignment; that there was not any Notice of any tax lien filed in any proper office prior to said assignment referred to in paragraph IX within the meaning of Section 3672 of the Internal Revenue Code of the United States of America (substantially corresponding to Section 3186(b), Revised Statutes as amended by section 613(a) of the 1928 Revenue Act and Act of June 25, 1936, 26 U.S.C.A. §1562) which provides that:

“Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) In accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or

(2) In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice, * * *.”

XII.

That the alleged Fieri Facies issued on December 1, 1941, referred to in Paragraph VI, is subsequent to the said assignment on July 27, 1937 to your

complainant and was issued after a suit was brought upon a tax claim against said Judson G. Rosebush in the Federal District Court for the Eastern District of Wisconsin in an action entitled "United States vs. Judson G. Rosebush, etal.", #5079 Civil Docket, resulting in a judgment being entered against said Judson G. Rosebush; that your complainant is informed and believes and therefore alleges it to be a fact that neither the defendant, Collector of Internal Revenue for Wisconsin, nor the United States by its Complaint in said action sought to impress a lien on the right, title and interest of said Judson G. Rosebush to any property or claim arising out of the assessment paid by him on the said Exchange National Bank Stock. That prior to December 1, 1941 no Notice of Tax Lien was filed either with the Clerk of the Federal District Court for the Eastern District of Washington or the County Auditor of Spokane County, Washington.

XIII.

That complainant and petitioner is informed and believes that [12] cross defendant Charles P. Robbins will declare additional dividends in the near future; that said Charles P. Robbins has deposited into the registry of this court the sum of \$4250.00 to be disposed of by the order or decree of this court; that your complaint Investment and Securities Co., is entitled to said sum of \$4,250.00 and any further additional dividends to be declared by said Charles P. Robbins to be deposited in the registry of this Court.

XIV.

That by reason of the conflicting claims of the defendant, Collector of Internal Revenue for Wisconsin, and your complainant and petitioner to said sum of 4,250.00 and to any additional dividends to be declared by said defendant, Charles P. Robbins, an actual controversy exists as to the title of said property within the meaning of the Federal Declaratory Judgment Act, U. S. Judicial Code Section 274(d), (U.S.C.A. Title 28, Section 400); that a declaratory judgment should be entered by this Court which will clarify and settle the legal relations of the parties and terminate said controversy and afford relief from the insecurity and uncertainty arising from such controversy.

Wherefore, your complainant and petitioner prays:

1. For an Order declaring complainant and petitioner the owner of said sum of 4,250.00 deposited in the registry of this Court and as such is entitled to receive same and any additional liquidating dividends to be declared and paid to or on account of said Judson G. Rosebush as a shareholder of the Exchange National Bank of Spokane who has paid his super added liability, and that cross defendant Charles P. Robbins be ordered to make such payments to your complainant and petitioner, Investment and Securities Co., and that any levy or alleged levy made upon said sum of \$4,250.00 or said additional dividends be dissolved and that the same be declared to be the property of your complainant.

2. That cross defendant Charles P. Robbins be

enjoined and restrained from paying said sum of \$4,250.00 or any additional dividend to any one other than your complainant and petitioner or [13] its lawful assigns, and defendant Collector of Internal Revenue for Wisconsin be enjoined and restrained from Making any further levy upon said \$4,250.00 or upon any additional liquidating dividends to be declared by said Robbins and that the Clerk of this Court be directed to pay said sum of \$4,250.00 to your complainant and petitioner, and that complainant and petitioner be awarded his costs herein and all equitable relief meet and proper in the premises.

WITHERSPOON, WITHER-
SPOON & KELLEY

By W. V. KELLEY

Attorneys for Investment and
Securities Co.

State of Washington,
County of Spokane—ss.

George L. Kimmel, being first duly sworn on oath, deposes and says:

That he is Vice President of Investment and Securities Co., complainant and petitioner in the above and foregoing complaint in intervention and petition for declaratory relief, that he has read said complaint and petition, knows the contents thereof and believes the same to be true.

GEORGE L. KIMMEL

Subscribed and sworn to before me this 9th day of March, 1942.

[Seal] W. V. KELLEY

Notary Public in and for the State of Washington,
residing at Spokane.

[Endorsed]: Filed Apr 2 1942. [14]

[Title of Court and Cause.]

ANSWER OF DEFENDANT, FRANK J. KUHL,
COLLECTOR OF INTERNAL REVENUE
FOR WISCONSIN

For ansywer to the complaint in intervention and petition for declaratory relief filed herein by Investment and Securities Company, a corporation, the defendant, Frank J. Kuhl, Collector of Internal Revenue for Wisconsin, by his attorneys, alleges and denies as follows:

1. Admits the allegations of paragraphs I, II and III of said complaint and alleges further that said Judson G. Rosebush is and was a resident of the City of Appleton, Outagamie County, in the State of Wisconsin, at all times since the year 1928, and for a long time prior thereto.

2. Admits only so much of paragraph IV as alleges that this defendant is the Collector of Internal Revenue for Wisconsin. Further answering, defendant alleges he first assumed the duties of his office on June 2, 1941.

3. Admits the allegations of paragraph V, save

that the United States has a prior claim to said dividends by virtue of a tax lien and/or an agreement dated July 27, 1937 made for its benefit by said Rosebush and complainant Investment and Securities Company.

4. Denies the allegations of paragraph VI, except that he admits that Judson G. Rosebush is indebted to the United States for federal income taxes due for the calendar year 1928 for which the United States obtained a judgment and duly issued execution and attachment or garnishment thereon with respect to certain funds now held by cross-defendant Charles P. Robbins.

5. Answering paragraph VII, defendant denies the inference that he imposed a tax upon Judson G. Rosebush. The tax for which the United States obtained the judgment referred to in the immediately preceding paragraph was duly and lawfully assessed by the Commissioner of Internal Revenue.

6. Defendant admits the allegations of paragraph VIII, except that said dividends are payable to the United States for the reasons set forth above in paragraph 3 hereof. [15]

7. The allegations of paragraph IX are denied, except that defendant alleges, upon information and belief, that a certain written agreement dated July 27, 1937 was entered into between the Investment and Securities Company and said Judson G. Rosebush concerning the assessment paid by him on the stock owned by him in the Exchange National Bank of Spokane. Further answering, defendant alleges that if in procuring the agreement the said Invest-

ment and Securities Company believed it could thereby acquire a claim prior to the then existing tax lien of the United States, of which it expressly was put on notice, or had knowledge prior to July 27, 1937, then this defendant alleges said Investment and Securities Company, and its officers or representatives, procured the same by wrongful acts, conduct and representations to said Rosebush who was led to believe and intended that the signing by him of such an agreement could have no greater effect than to assign to said Investment and Securities Company his interest in said fund effective only if and when his said 1928 tax liability was fully paid; that said agreement of July 27, 1937 was drawn by attorneys for the Investment and Securities Company which knew Rosebush was without the advice of counsel in the premises and did not intend to prefer it as against the United States. Defendant further states that said alleged assignment does not correctly recite the facts of which the Investment and Securities Company had knowledge or of which it was put on notice, upon the basis of which the tax lien arose, that is to say, the tax lien did not arise merely by virtue of an order for distraint (the agreement incorrectly states "Order of Distraint", it became effective upon February 18, 1934 upon receipt of the assessment list by the Collector of Internal Revenue. Notice of said lien was also filed with the Register of Deeds at Appleton, Wisconsin, and with the Clerk of the United States District Court at Milwaukee, Wisconsin, during

April, 1934; that a warrant for distraint was also issued in April, 1934; that the signature of said Rosebush to said agreement was induced and procured in bad faith on the part of the Investment and Securities Company; that it was obtained under [16] pressure exercised against said Rosebush by threats to finally dispose of certain of his assets and enforce payment of certain claims asserted against him; that the Investment and Securities Company wrongfully induced said Rosebush to refrain from submitting the agreement to the Internal Revenue officials before execution thereof; that if this Court should assume jurisdiction hereof and hold that under the meaning of the language of the alleged assignment the rights of the United States are intended to be inferior to those of the Investment and Securities Company, in the absence of the filing and recording of notices of lien at Spokane prior to July 27, 1937, the defendant then prays that this Court hold the assignment to be null and void as against the United States in view of the above allegations, or in the alternative, reform the agreement to give effect to the intent of said Rosebush by making it subsequent and junior to the tax lien of the United States which became effective on February 18, 1934, or, in any event, not later than in April, 1934.

Further answering, defendant alleges that said agreement of July 27, 1937 constitutes a contract for the benefit of the United States as a third party beneficiary or should be so construed under all of the attending circumstances.

8. Answering paragraph X, defendant states that long after the execution of said assignment a copy was served upon said Charles P. Robbins by the Investment and Securities Company but denies the remaining allegations of paragraph X. Further answering, defendant states that said Robbins withheld the payments referred to in paragraph X because of the receipt of a letter from Judson G. Rosebush to said Robbins dated Appleton, Wisconsin, June 16, 1940, wherein said Rosebush advised Robbins that he had steadily maintained with the Investment and Securities Company the position that the assignment of his dividend rights in the Exchange National Bank stock was valueless until and unless the prior claim of the Government had been satisfied and that that still was his position.

9. Answering paragraph XI, defendant states that the United [17] States duly established the tax lien with respect to all assets of said Judson G. Rosebush under Section 3186 of the Revised Statutes as amended by Section 613 of the Revenue Act of 1928, and Section 509 of the Revenue Act of 1934; that said lien became effective as of the date of the receipt of the assessment list by the Collector of Internal Revenue at Milwaukee on or about February 18, 1934; that notices of lien were duly filed in April, 1934 with the Register of Deeds at Appleton, Wisconsin, and with the Clerk of the United States District Court at Milwaukee, Wisconsin, covering the unpaid 1928 tax assessment; that said Rosebush held in his own possession at Appleton, Wisconsin, at all times since February

1, 1934, the stock certificates issued in his name by the Exchange National Bank of Spokane, Washington, for 250 shares; that said stock certificates still are in the possession of said Rosebush at Appleton, Wisconsin; that said stock and all rights arising in connection therewith, including any dividends payable on the assessments paid thereon to the bank receiver, became and still are subject to the aforesaid tax lien of the United States; that said shares and any increments or rights arising therefrom have their situs for the purpose of the federal tax lien at the domicile of said Rosebush in Wisconsin where notices of the tax lien, if any notices were necessary as against third persons, were duly filed in April, 1934.

Except as admitted, qualified or explained, the allegations of paragraph XI are denied.

10. Answering paragraph XII, defendant alleges that a writ of fieri facias issued out of the United States District Court for the Eastern District of Wisconsin on November 27, 1941 with respect to the \$37,220.85 judgment against Rosebush for 1928 taxes, plus interest, and that the writ was duly served by the United States Marshal upon said Charles P. Robbins; that garnishment also was issued in connection with said judgment under date of March 20, 1942, directed to Charles P. Robbins and was duly served upon him; that Civil Action #5079, entitled "United States v. Judson G. Rosebush, et al." was filed December 14, 1935 in the United States District Court for the Eastern [18] District of Wisconsin, and resulted in the

aforesaid judgment against Rosebush but the court retained jurisdiction to enter such further judgments, orders or decrees to which the United States may be entitled; that in said action the original bill of complaint was amended in December, 1939 making Mrs. Rosebush a party defendant thereto and seeking discovery, accounting, etc. and to enforce the tax lien of the United States against all properties or rights to property belonging to said Rosebush to which the tax lien theretofore had attached; that as a result of said complaint, as amended, the United States discovered that Judson G. Rosebush still held certificates representing 250 shares of stock of the Exchange National Bank on which assessments had been paid by him; that he had on October 7, 1935 undertaken to transfer his said rights in said stock and the assessment paid thereon to his wife but the transfer was held to be ineffective as against the lien of the United States. Defendant admits that no notice of tax lien was filed with the Clerk of the District Court for the Eastern District of Washington or with the County Auditor of Spokane County prior to December 1, 1941. Except as thus admitted, qualified or explained, each and every of the allegations of paragraph XII are denied.

11. Answering paragraph XIII, defendant denies that the Investment and Securities Company is entitled to the said sum of \$4,250 or any further additional dividends that may be declared by said Robbins. The remaining allegations of paragraph XIII are admitted.

12. Answering paragraph XIV, defendant alleges that any controversy or conflict of claims with respect to the fund of \$4,250 and additional dividends to be declared by said Robbins exists not between this defendant and the complainant but between the United States of America and said Investment and Securities Company. Defendant further states that said controversy is with respect to federal taxes and by reason thereof this Court is without jurisdiction to render a declaratory judgment as prayed by complainant.

Wherefore, this defendant prays:

1. That the complaint and petition herein of the complainant Investment and Securities Company be dismissed; [19]

2. For such other, further, general and equitable relief as to the Court may seem meet and proper, or as prayed in paragraph 7 hereof with respect to the alleged assignment.

Comes now the defendant, Frank J. Kuhl, Collector of Internal Revenue for the District of Wisconsin, in answer to the complaint and answer of cross-defendant Charles P. Robbins, Shareholders' Agent, and alleges and denies as follows in regard to cross-defendant's plea for affirmative relief:

1. That the allegations of paragraph I are admitted to be true.

2. That the allegations of paragraph II are admitted to be true.

3. That the allegations of paragraph III are admitted to be true, except it is alleged that the

assignment by said Rosebush to the Investment and Securities Company is junior and subsequent to the right of the United States to said moneys for the reasons set forth above in answer to the complaint and petition of the Investment and Securities Company.

4. Answering paragraph IV, it is admitted that a fieri facias was served on cross-defendant, Charles P. Robbins, on December 1, 1941, by the United States Marshal for the Eastern District of Washington and that said fieri facias was issued by the Clerk of the United States District Court for the Eastern District of Wisconsin, under date of November 27, 1941, on account of a judgment obtained by the United States for unpaid income taxes and interest in the amount of \$37,220.85. Except as above admitted, each of the allegations of paragraph IV is denied.

5. That the allegations of paragraph V are admitted to be true.

6. That the allegations of paragraph VI are denied for the reason that the defendant does not have sufficient information to form a belief.

7. That the allegations of paragraph VII are denied for the reason that the defendant does not have sufficient information to form a belief. Further answering, defendant alleges that no costs whatsoever should be allowed against said fund of \$4,250 deposited in the registry of this Court. [20]

8. Upon information and belief, defendant is willing to admit the allegations of paragraph VIII.

9. That the allegations of paragraph IX are

denied for the reason that defendant does not have sufficient information to form a belief.

10. That the allegations of paragraph X are denied.

11. That the allegations of paragraph XI are admitted.

12. The allegations of paragraph XII are denied for the reason that the defendant does not have sufficient information to form a belief.

AFFIRMATIVE DEFENSE

For a further, separate and distinct defense, the defendant, Frank J. Kuhl, Collector of Internal Revenue for the Eastern District of Wisconsin alleges that this Court is without jurisdiction over his person and that the United States of America is the real party in interest and that this defendant has no right, title or interest in this said action, instituted in the Eastern District of Washington.

Wherefore, this defendant prays that he be dismissed as a defendant in the above-entitled action instituted in this Court and for such other, general and further relief as to the Court may seem just and equitable.

EDWARD M. CONNELLY

United States Attorney.

HARVEY ERICKSON

Assistant U. S. Attorney.

Copy received this 13th day of July, 1942.

THOS. A. E. LALLY

Attorney for Cross-Defendant

WITHERSPOON, WITHER-
SPOON & KELLEY

Attorneys for Plaintiff.

[Endorsed]: Filed Jul 14 1942. [21]

[Title of Court and Cause.]

ANSWER OF CROSS-DEFENDANT CHARLES
P. ROBBINS, SHAREHOLDERS' AGENT

Comes now the above-named Cross-Defendant, Charles P. Robbins, Shareholders' Agent for Shareholders of Exchange National Bank of Spokane, Washington, and in answer to the Complaint in Intervention of Investment and Securities Co., alleges and denies as follows in regard to said complaint and petition for declaratory relief of said Investment and Securities Co:

I.

Admits paragraph I.

II.

Admits paragraph II.

III.

Admits paragraph III.

IV.

Admits paragraph IV.

V.

In answer to paragraph V, this cross-defendant denies each and every allegation, matter and thing therein contained except that he has had in his possession as such shareholders' agent the sum of \$4250.00, which ordinarily was payable to the said Judson G. Rosebush, and admits that possibly additional sums may be payable to the said Rosebush hereafter from this answering cross-defendant, and which sums are payable because of stock assessments paid by the said Rosebush on shares of stock that he owned in the said Exchange National Bank of Spokane, an insolvent National Banking Association at the time it was declared insolvent by the Comptroller of the Currency in 1929.

VI.

Admits paragraph VI if the word "Washington" in the sixth line thereof is stricken and the word "Wisconsin" is inserted in place thereof, and this answering cross-defendant further alleges herein that thereafter under date of March 2, 1942 an alleged writ of garnishment was issued by the Clerk of the District Court of the United States of America for the Eastern District of Wisconsin in a suit therein in which the United States of America was plaintiff, the said Judson G. Rosebush defendant, and this answering defendant was garnishee defendant, by which writ this answering cross-defendant was ordered to answer what if any moneys or property he had belonging to said Judson G. Rosebush. [22]

VII.

Admits paragraph VII.

VIII.

Admits paragraph VIII.

IX.

Admits paragraph IX.

X.

Admits paragraph X.

XI.

Answering paragraph XI this cross-defendant has not sufficient knowledge and information regarding the matters therein set out to admit the same, and therefore denies each and every allegation, matter and thing therein contained.

XII.

Admits paragraph XII.

XIII.

Answering paragraph XIII, this answering cross-defendant admits that it has deposited into the registry of this Court the said sum of \$4250.00 and that he will probably have an additional sum of money payable to the said Judson G. Rosebush; that except as herein expressly admitted, this answering cross-defendant denies each and every other allegation, matter and thing contained in said paragraph XIII.

XIV.

Admits paragraph XIV.

THIS ANSWERING CROSS-DEFENDANT,
CHARLES P. ROBBINS, AS SHARE-
HOLDERS' AGENT FOR SHAREHOLD-
ERS OF EXCHANGE NATIONAL BANK
OF SPOKANE, FURTHER PLEADS FOR
THE FOLLOWING RELIEF HEREIN:

I.

That at all dates herein mentioned he was and now is the duly elected, qualified and acting Shareholders' Agent of the shareholders of the Exchange National Bank of Spokane, an insolvent national banking association, and is a resident of Spokane, Washington;

That during said times, Investment and Securities Co. was and now is a corporation organized under the laws of the State of Washington with its [23] principal place of business in Spokane, Washington;

That during said times Judson G. Rosebush was and now is a resident of the State of Wisconsin and a shareholder of said association;

That heretofore in the month of December, 1941, this pleading defendant commenced the above-entitled cause in equity by filing a complaint in intervention in which the following paragraphs numbered II, III, IV, V, VI, and VII were set out, and in which this pleading defendant asked for relief, including the relief herein set out, which

paragraphs are again pleaded herein and wherein this cross-defendant is referred to as "complainant".

II.

That your complainant is indebted to the said Judson G. Rosebush, on account of dividends payable to shareholders, in the sum of Four Thousand Two Hundred and Fifty Dollars (\$4250.00), with possible additional sums payable to him hereafter.

III.

That said Investment and Securities Company has served written notice on your complainant that the said Judson G. Rosebush has assigned to it by written assignment all moneys payable to him from your complainant and said corporation has demanded that your complainant pay said sum to it and has threatened to sue your complainant if he does not do so.

IV.

That E. J. Koelzer, Assistant United States Attorney at Milwaukee, Wisconsin, has had the United States Marshal for the Eastern District of Washington, Northern Division, serve on your complainant, on December 1, 1941, an alleged Fieri Facias, allegedly issued by the Clerk of the United States District Court for the Eastern District of Wisconsin under date of November 27, 1941, and which commands the said Marshal to levy upon the "goods and chattels, lands and tenements" in his district of the said Judson G. Rosebush on account of an alleged debt of \$37,220.85;

That said Writ of Fieri Facias does not allege the exact nature of the said debt, but your complainant is informed it is due the United States by reason of unpaid income tax.

V.

That your complainant herewith deposits into the registry of this [24] Court the said sum of Four Thousand Two Hundred and Fifty Dollars (\$4250.00) to be disposed of by the order or decree of this court.

VI.

That if complainant pays said sum to any one of said parties he is informed and believes, and on information and belief alleges that he will be sued by the other party or parties.

VII.

That the sum of Two Hundred and Fifty Dollars (\$250.00) is a reasonable sum to be allowed complainant as attorney's fees, together with his costs from said parties and from said sum herein.

VIII.

That after the filing of the said Complaint for Intervention there was served on this pleading defendant an alleged writ of garnishment issued under date of March 2, 1942 by and out of the United States District Court for the Eastern District of Wisconsin, in which cause the United States of America is plaintiff, Judson G. Rosebush defendant, and this pleading defendant is garnishee de-

fendant, ordering this pleading defendant to answer within twenty (20) days of the date of service what if any properties or moneys this pleading defendant has or then had belonging to said Rosebush.

IX.

That because of the Writ of Fieri Facias mentioned in Paragraph VI of the complaint of said Investment and Securities Co. and because of the said writ of garnishment this pleading defendant has been obliged to employ lawyers in the City of Milwaukee, Wisconsin to act as his attorneys because of said writs in said suit in that jurisdiction and will incur attorney's fees in an amount he cannot at this time determine.

X.

That because of the additional facts pleaded herein in addition to what was pleaded in the said complaint for intervention, this pleading defendant now alleges that the sum of Five Hundred Dollars (\$500.00) is a reasonable sum to be allowed this pleading defendant as attorney's fees herein from the United States of America, from Investment and Securities Co. and from the said sum of \$4250.00.

[25]

XI.

That on filing said Complaint for Intervention in this court in December, 1941, this pleading defendant surrendered into the registry of the court said sum of \$4250.00, praying that the Court determine to whom the same shall be paid.

XII.

That this pleading defendant has at all times been able, ready and willing to pay said sum to the person or litigant entitled thereto, but does not wish to have a judgment entered against him herein ordering him to pay it to one person and have the said court in Wisconsin order him to pay it to another.

Wherefore this pleading defendant prays the court for an order and decree decreeing to whom said money and any other money that may come into his possession as such Shareholders' Agent and ordinarily paid to the said Judson G. Rosebush shall be paid; that said decree shall also save this pleading defendant harmless from an order or decree of any other court in respect to said moneys and adverse to the order and decree of this court; that this pleading defendant shall be allowed attorney's fees in the sum of Five Hundred Dollars (\$500.00) and his costs and disbursements.

THOS. A. E. LALLY

Attorney for Charles P. Robbins,
Shareholders' Agent
for Shareholders of Exchange
National Bank of
Spokane, Washington

State of Washington
County of Spokane—ss.

Charles P. Robbins, being first duly sworn, upon oath deposes and says:

That he is the cross-defendant named in the foregoing answer; that he has read the same, knows the contents thereof and that the same is true as he verily believes.

CHARLES P. ROBBINS

Subscribed and sworn to before me this 23rd day of April, 1942.

(Notarial Seal) THOS. A. E. LALLY

Notary Public in and for the State of Washington,
residing at Spokane

SUMMONS WAIVED

Received copy hereof this 23 day of April, 1942

WITHERSPOON, WITHER-
SPOON & KELLEY

Attorney for Investment and
Securities Co. [26]

Received copy hereof this..... day of April, 1942

Attorney for United States of
America, at.....

[Endorsed]: Filed Apr 23 1942. [27]

In the District Court of the United States for the
Eastern District of Washington Northern
Division

No. 235

INVESTMENT AND SECURITIES COMPANY,
a corporation,

Plaintiff,

v.

CHARLES P. ROBBINS, Shareholders' Agent for
Shareholders of Exchange National Bank of
Spokane, Washington,

Cross-Defendant,

FRANK J. KUHL, Collector of Internal Revenue
for Wisconsin,

Defendant,

UNITED STATES OF AMERICA,
Applicant for Intervention

ORDER FOR INTERVENTION

The Court having read the motion to intervene and being fully advised in the premises, and it appearing to the Court that the United States of America is a proper party to said action and has an interest in said action; therefore, it is

Ordered and Decreed that the United States of America shall be allowed to intervene in said action and file its answer in intervention.

Done in open Court this 14th day of July, 1942.

L. B. SCHWELLENBACH

United States District Judge.

Presented by

HARVEY ERICKSON

Assistant United States

Attorney

Approved by

THOS. A. E. LALLY

Attorney for Cross-Defendant

WITHERSPOON WITHER-

SPOON & KELLEY

Attorneys for Plaintiff

[Endorsed]: Filed Jul 14 1942 [28]

[Title of Court and Cause]

ANSWER IN INTERVENTION

(United States of America)

Comes now the United States of America by Edward M. Connelly, United States Attorney for the Eastern District of Washington, and Harvey Erickson, Assistant United States Attorney for said District, and by virtue of authority of the Attorney General of the United States, and under his direction, claim and assert that the United States of America has a right, title and interest to the moneys deposited with the Clerk of the Federal Court and in the hands of Charles P. Robbins, Shareholders' Agent, Exchange National Bank of Spokane, and allege as follows:

I.

That the United States of America made an assessment for the calendar year 1928 against Judson G. Rosebush in the Revenue Collection District of Wisconsin in the year 1934 in the amount of \$37,220.85 for income taxes. That immediately thereafter notices of the tax lien of the United States against Judson G. Rosebush were recorded with the Clerk of the United States District Court for the Eastern District of Wisconsin at Milwaukee and with the Register of Deeds for Outagamie County, Wisconsin. That said notices of tax lien were recorded prior to the assignment later referred to of the cross-defendant Charles P. Robbins, Shareholders' Agent, to the complainant Investment and Securities Company.

II.

That during the year 1937 the United States brought an action in the District Court for the Eastern District of Wisconsin against Judson G. Rosebush, a resident of Appleton, Wisconsin.

III.

That on November 26, 1941, a judgment was entered in the Eastern District of Wisconsin against Judson G. Rosebush in the sum of \$37,220.85 plus costs, and a copy of said judgment is attached hereto, incorporated herein by reference and referred to as Exhibit A.

IV.

That on November 27, 1941, the United States Attorney for the Eastern District of Wisconsin caused

a writ of execution to issue [29] against the properties of Judson G. Rosebush, which writ was served upon the Investment and Securities Company of Spokane in the Eastern District of Washington, on December 1, 1941. That on December 1, 1941, when said writ of execution was served upon the Investment and Securities Company, the said Investment and Securities Company had the sum of \$4,250.00 in its possession owing to the said Judson G. Rosebush.

V.

That the federal tax lien which attached against the said Judson G. Rosebush in the sum of \$37,220.85 during the year 1934 attached as a lien upon all moneys and property then in the hands of the said Judson G. Rosebush, or any property or moneys subsequently coming into his possession in any part of the United States.

VI.

That on July 27, 1937, Judson G. Rosebush and the Investment and Securities Company, complainant herein, made and entered into an agreement referred to as Exhibit B, attached hereto, and made a part hereof by reference, whereby the said Judson G. Rosebush assigned all his right, title and interest to the Investment and Securities Company, of certain moneys due the said Judson G. Rosebush by Charles P. Robbins, Shareholders' Agent of the Exchange National Bank of Spokane, to the Investment and Securities Company, subject to the claims and the lien of the United States by virtue of income tax assessments.

VII.

That the United States by virtue of the receipt of the collection list by the Collector of Internal Revenue for the District of Wisconsin and the assignment above referred to, and actual notice of the claim of the United States by the complainant Investment and Securities Company, has the prior right, title and interest to any funds now in the hands of the said cross-defendant, Charles P. Robbins, or deposited with the Clerk of the Federal Court by the said Charles P. Robbins, or coming into the hands of the said Charles P. Robbins in the future as a result of the liquidation of the Exchange National Bank of Spokane, Washington.

Wherefore, your Intervenor prays: [30]

1. That it be adjudged and have the prior right, title and interest to all sums of money now in the possession of the said Charles P. Robbins, Shareholders' Agent of the Exchange National Bank of Spokane, Washington, or deposited with the Clerk of the Federal Court for the Eastern District of Washington, by the said Charles P. Robbins, and of all sums coming into the possession of the said Charles P. Robbins in the future owing to the said Judson G. Rosebush as a result of the liquidation of the Exchange National Bank of Spokane, Washington.

2. That the claim of the United States be adjudged prior and superior to the claim of all other parties to said action, and that the United States recover its costs and disbursements herein, and that

the United States have such other and further relief as to the Court may seem just and equitable.

EDWARD M. CONNELLY

United States Attorney

HARVEY ERICKSON

Assistant United States

Attorney

Copy received this 13th day of July, 1942.

THOS. A. E. LALLY

Attorney for Cross-Defendant

WITHERSPOON WITHER-

SPOON & KELLEY

Attorneys for Plaintiff [31]

EXHIBIT A

In the District Court of the United States of America
for the Eastern District of Wisconsin

No. 5079

Civil Docket

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUDSON G. ROSEBUSH; APPLETON WIRE
WORKS, INC., a corporation; PATTEN
PAPER CO., a corporation; BANK OF KAU-
KAUNA, a corporation; FIRST NATIONAL
BANK, Appleton, Wisconsin, a corporation;
NORTHWESTERN NATIONAL BANK,
FIRST NATIONAL BANK, Chicago, Illinois,
and BARBARA J. MCNAUGHTON ROSE-
BUSH,

Defendants.

JUDGMENT

The motion of the-plaintiff for judgment by default against the above-named defendant, Judson G. Rosebush, having come on to be heard before this Court on the 17th day of June, 1940, and the Court having ordered judgment in favor of the plaintiff and against said defendant, Judson G. Rosebush, for the relief prayed for in the plaintiff's complaint, as amended; and it appearing by affidavit on file herein that the said defendant Judson G. Rosebush is not now nor has he during any time during the

pendency of this action been in the military or naval service of the United States, nor a member of the reserve of the land or naval forces of the United States in active duty; and upon the written stipulation filed herein on the 6th day of January, 1941, agreeing to the dismissal of the above-entitled action without costs as against the defendants Appleton Wire Works, Inc., a corporation, Patten Paper Co., a corporation; Bank of Kaukauna, a corporation; First National Bank, Appleton, Wisconsin, a corporation; Northwestern National Bank, First National Bank, Chicago, Illinois.

It Is Ordered and Adjudged that the plaintiff, United States of America, do have and recover of the defendant, Judson G. Rosebush, the sum of Twenty-four Thousand Four Hundred Forty-one and 67/100 Dollars (\$24,441.67), principal and Twelve Thousand Seven Hundred Seventy-Nine and 18/100 Dollars (\$12,779.18), [32] interest, making a total sum of Thirty-seven Thousand Two Hundred Twenty and 85/100 Dollars (\$37,220.85); and that the plaintiff have execution therefor.

It Is Further Ordered and Adjudged that the above-entitled action be and the same hereby is dismissed upon the merits thereof, without costs as to the defendants Appleton Wire Works, Inc., a corporation, Patten Paper Co., a corporation, Bank of Kaukauna, a corporation, First National Bank, Appleton, Wisconsin, a corporation, Northwestern National Bank and First National Bank, Chicago, Illinois.

It Is Further Ordered and Adjudged that this Court hereby expressly retains jurisdiction over this cause and the defendants Judson G. Rosebush and Barbara J. McNaughton Rosebush for the purpose of making all appropriate orders, judgments or decrees to which the plaintiff, United States of America, may be entitled under the prayers of the complaint, as amended, including discovery, accounting or receivership, as well as such other orders as may be necessary to give effect to this judgment and decree.

F. RYAN DUFFY

District Judge

Dated at Milwaukee, Wisconsin this 26th day of November, 1941.

(Endorsements)

In the District Court of the United States for the
Eastern District of Wisconsin.

Civil Docket 5079

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUDSON G. ROSEBUSH: APPLETON WIRE
WORKS, INC., a corporation; PATTEN
PAPER CO., a corporation; BANK OF
KAUKAUNA, a corporation; FIRST NA-
TIONAL BANK, Appleton, Wisconsin, [33]
a corporation; NORTHWESTERN NA-
TIONAL BANK, FIRST NATIONAL
BANK, Chicago, Illinois, and BARBARA J.
MC NAUGHTON ROSEBUSH,

Defendants.

JUDGMENT

U. S. Dist. Court; East. Dist. of Wis. Filed Nov.
26, 1941 B. H. Westfahl, Clerk.

Certified Copy

D. C. Form No. 30

United States of America,

Eastern District of Wisconsin—ss:

I, B. H. Westfahl, Clerk of the United States Dis-
trict Court in and for the Eastern District of Wis-
consin, do hereby certify that the annexed and fore-
going is a true and full copy of the original Judg-
ment, filed Nov. 26, 1941, in the case of United States
of America vs. Judson G. Rosebush; et al, Civil

Docket No. 5079 now remaining among the records of said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Milwaukee, Wis. this 9th day of January, A. D. 1942.

(Seal)

B. H. WESTFAHL, Clerk.

(Endorsements)

United States District Court Eastern District
of Wisconsin

UNITED STATES OF AMERICA,

vs.

JUDSON G. ROSEBUSH; APPLETON WIRE
WORKS, INC., a corporation; PATTEN
PAPER CO., a corporation; BANK OF KAU-
KAUNA, a corporation; FIRST NATIONAL
BANK, Appleton, Wis., a corporation;
NORTHWESTERN NATIONAL BANK,
FIRST NATIONAL BANK, Chicago, Illinois,
and BARBARA J. MC NAUGHTON ROSE-
BUSH

Certified Copy [34]

EXHIBIT B

AGREEMENT

This agreement, made and entered into at Spo-
kane, Washington, this 27th day of July, 1937, by
and between Investment and Securities Co., a Wash-

ington corporation, of Spokane, Washington, party of the first part, hereinafter for convenience sometimes referred to as the "Company", and Judson G. Rosebush, of Appleton, Wisconsin, party of the second part, hereinafter for convenience sometimes referred to as the "Pledgor",

WITNESSETH:

Whereas, the party of the second part is indebted to the party of the first part on his two certain promissory Notes, as follows:

Note dated November 30, 1932, in the principal amount of Twenty-five Thousand Dollars (\$25,000.00), with interest thereon at six per cent (6%) from date,

upon which there was collateral pledged as follows:

325 shares of Nekoosa-Edwards Paper Company common;

600 shares of Northern Paper Mills common.

Note dated December 19, 1932, in the principal amount of Seventy-five Thousand Dollars (\$75,000.00), with interest thereon at six per cent (6%) from date,

upon which there was collateral pledged as follows:

750 shares of Northern Paper Mills common;

820 shares of Inland Empire Paper Company, common, (original issue);

and,

Whereas, under date of April 7, 1936, notice by registered mail was given by the Company to the

Pledgor that unless the aforesaid indebtedness was paid on or before April 22, 1936, the Company would sell at private sale at their office all of the collateral securing the said indebtedness; and the indebtedness not having been paid on the date set for sale, a sale was held and no other bidders appearing the securities held as collateral were bid in by the Company and applied against the indebtedness of the party of the second part, as follows:

Applied to Note in the principal amount of Twenty-five Thousand Dollars (\$25,000.00), dated November 30, 1932, the proceeds of:

325 shares of Nekoosa-Edwards Paper Company common stock at \$30.00 per share,....	\$ 9,750.00
600 shares of Northern Paper Mills common stock at \$10.00 per share.....	6,000.00

Total credited to above Note,.....\$15,750.00

Applied on Note in the principal amount of Seventy-five Thousand Dollars (\$75,000.00), dated December 19, 1932, the proceeds of:

750 shares of Northern Paper Mills common stock at \$10.00 per share,.....	\$ 7,500.00
820 shares of Inland Empire Paper Company common at	1.00

Total credited to above Note,.....\$ 7,501.00

and,

Whereas, in arranging to secure stock powers from the Pledgor for the transfer of new Inland Empire Paper Company stock issued in lieu of the old common stock it became apparent that the Pledgor questioned the validity of the sale of 820 shares of Inland Empire Paper Company common stock for the sum of One Dollar (\$1.00), and as the Company is not desirous of working any undue

hardship upon the Pledgor and to that end is willing to afford the Pledgor certain opportunities to reacquire said stock, in consideration for which the Pledgor is willing to assign to the Company as security to the balance of his indebtedness any recovery which may be made on the assessment paid on stock of the Exchange National Bank, Spokane, Washington:

Now, therefore, in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

The party of the second part agrees to and does hereby ratify, confirm and approve the sale made April 22, 1936, by Investment and Securities Co. to itself of the shares of stock held as collateral security to the obligations of the Pledgor, at the prices named and the application of the proceeds thereof, as follows: [36]

Applied on Note in the principal amount of Twenty-five Thousand Dollars (\$25,000.00), dated November 30, 1932, the proceeds of:

325 shares of Nekoosa-Edwards Paper Com-	
pany common stock at \$30.00 per share,....	\$ 9,750.00
600 shares of Northern Paper Mills common	
stock at \$10.00 per share,.....	6,000.00

Total credited to above Note,.....	\$15,750.00
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Applied on Note in the principal amount of Seventy-five Thousand Dollars (\$75,000.00), dated December 19, 1932, the proceeds of:

750 shares of Northern Paper Mills common	
stock at \$10.00 per share,.....	\$ 7,500.00
820 shares of Inland Empire Paper Com-	
pany common at	1.00

Total credited to above Note,	\$ 7,501.00
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The party of the second part further agrees to and does hereby assign to party of the first part as security to the balance of indebtedness owing by the party of the second part to party of the first part any recovery which may be made by or on behalf of party of the second part from or on account of an assessment paid on stock of Exchange National Bank, Spokane, Washington, and further agrees to make, execute and deliver to party of the first part any further instruments or documents necessary, needful and proper to make this assignment for collateral purposes effective and to enable party of the first part to recover any amounts which may or shall be due by reason of the payment of such assessments on said Exchange National Bank stock. It is understood that the Collector of Internal Revenue has filed an Order of Distrainment against party of the second part and that this assignment is subsequent and junior to any lien against said recovery that said Collector of Internal Revenue may have acquired by virtue of such Order of Distrainment.

In consideration of the foregoing, the party of the first part agrees that no sale of all or any part of said 820 shares of Inland Empire Paper Company common stock shall be made before April 1, 1938, unless consented to by party of the second part; that if any sale of said stock shall be made subsequent to April 1, 1938, and prior to April 1, 1939, [37] the party of the first part will give and grant unto party of the second part an opportunity to purchase all or any part of said 820 shares of Inland Empire Paper Company stock

at the price at which party of the first part shall contemplate selling it, and that party of the second part shall have a five day period in which to elect to purchase or not to purchase all or any part of said stock, during which five day period the party of the first part will not sell the stock to anyone else. Said five day period shall begin with the date and time of depositing a letter, full first class air mail postage prepaid, in the United States mails, addressed to the last known address of party of the second part, and it is expressly understood that if party of the second part shall decide to accept the offer of sale so given by the Company he will at once communicate his acceptance by telegram or telephone to the Company and will forward bank draft or cashier's check in full payment thereof at once, so that said bank draft or cashier's check shall be in the hands of the Company not later than five days after the expiration of the first five day period during which the offer shall be accepted. Following the expiration of said first five day period, if said offer shall not be accepted, or the expiration of five days *days* thereafter, if said offer shall be accepted but payment shall not be received within said last five day period, the Company shall be under no further duty to withhold said stock from the market and may sell said stock free and discharged of any of the terms and provisions of this Agreement.

It is understood and agreed that the party of the first part has pledged or will pledge to the Reconstruction Finance Corporation 418 of the 820 shares

of the Inland Empire Paper Company stock in accordance with the reorganization plan of the Inland Empire Paper Company. This pledge is for the purpose of vesting in the Reconstruction Finance Corporation voting rights to the said stock so pledged, which pledge shall continue until the indebtedness of the Inland Empire Paper Company to the Reconstruction Finance Corporation is paid in full or until the proxy and assignment is [38] released by the Reconstruction Finance Corporation, or its successor in interest, and it is further understood and agreed that any sale of the stock of the Inland Empire Paper Company, either to the said party of the second part or to others, during the terms of this pledge and proxy, shall be made subject to the terms and conditions of the pledge and proxy.

It is further understood and agreed that in the event of the sale of all or any part of said 820 shares of Inland Empire Paper Company common stock on or before April 1, 1939, the Company will credit upon the indebtedness of the party of the second part the excess of the sale price of all or any part of said stock over the One Dollar (\$1.00) price at which the said stock was bid in by the Company.

It is further agreed that if the Company shall sell either the Nekoosa-Edwards Paper Company common stock or the Northern Paper Mills common stock before April 1, 1938, the Company will credit party of the second part on his notes with any amount received by the Company for such stock in excess of the amount at which the Company bid said stock in at the sale aforesaid.

Time is expressly declared to be of the essence of each and all of the terms and provisions hereof.

This agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the party of the first part and upon the heirs, executors, administrators, legal representatives and assigns of the party of the second part.

In Witness Whereof, the party of the first part has caused its corporate signature and seal to be hereunto affixed by its proper officers duly authorized, and the party of the second part has hereunto affixed his hand and seal, the day and year first above written.

INVESTMENT AND SECURITIES CO.,

By L. A. STILSON
Vice President.

Attest:

GEO. L. KIMMEL
Secretary.

Party of the First Part.

[Seal] JUDSON G. ROSEBUSH
Party of the Second Part.

[39]

State of Washington
County of Spokane—ss.

On this 10th day of September, 1937, before me personally appeared L. A. Stilson and Geo. L. Kimmel, to me known to be the Vice President and Secretary, respectively, of Investment and Securities Co., the corporation that executed the within and foregoing instrument, and acknowledged the said

instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

E. R. ERICKSON

Notary Public in and for the
State of Washington, residing
at Spokane.

State of Wisconsin
County of Outagamie—ss.

I, the undersigned, a Notary Public in and for the State of Wisconsin, do hereby certify that on this 27th day of July, 1937, personally appeared before me Judson G. Rosebush, to me known to be the individual described in and who executed the within and foregoing instrument and acknowledged that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal the day and year first above written.

M. KRONSCHNABEL

Notary Public in and for the
State of Wisconsin, residing
at Appleton. My commission
expires Aug. 20, 1939.

[Endorsed]: Filed July 14 1942. [40]

[Title of Court and Cause.]

REPLY OF CHARLES P. ROBBINS, SHARE-
HOLDERS AGENT, TO ANSWER OF
UNITED STATES OF AMERICA

Comes now Charles P. Robbins, Shareholders Agent of the *Sah*eholders of The Exchange National Bank of Spokane, Washington and in reply to the answer of the United States of America, admits, alleges and denies said answer as follows:

—1—

Has not sufficient knowledge as to the allegations of paragraph I to form a belief as to the correctness thereof and therefore denies the same.

—2—

Denies paragraph—II—thereof.

—3—

Denies paragraph III thereof.

—4—

Has not sufficient knowledge as to the allegations of paragraph IV to form a belief and therefore denies the same.

—5—

Denies each and every allegation in paragraph V thereof.

—6—

Answering paragraph VI, this pleader has been informed that such facts therein pleaded, took place,

but has no personal knowledge thereof and therefore denies the same.

—VII—

Denies each and every allegation matter and thing contained in paragraph VII thereof

Wherefore this cross defendant prays, for the relief sought in his original petition filed herein; that the Court determine to whom he shall pay the money he has deposited in this Court and the money that he may hereafter have payable to the said Judson G. Rosebush; that he be awarded the attorney fee therein sought and his costs and disbursements.

THOS. A. E. LALLY

Attorney for the said Chas. P.
Robbins, Shareholders Agent.

[41]

State of Washington

County of Spokane—ss.

Charles P. Robbins being first duly sworn upon oath deposes and says that he is the above named shareholders agent and cross-defendant; that he has read the foregoing reply, knows the contents thereof and the same is true as he verily believes.

CHARLES P. ROBBINS

Shareholders Agent of the
Shareholders of The Ex-
change National Bank of Spo-
kane, Wash.

Subscribed and sworn to before me this 20th day
of July 1942.

[Seal]

THOS. A. E. LALLY

Notary Public.

Received copy hereof This 21 day of July 1942.

WITHERSPOON WITHER-
SPOON & KELLEY

Attorneys for Investment &
Securities Co.

EDWARD M. CONNELLY

HARVEY ERICKSON

Attorneys for U.S.A.

[Endorsed]: Filed Jul 20 1942 [42]

[Title of Court and Cause.]

MOTION TO STRIKE

Complainant and petitioner move the Court to strike from the Answer in Intervention of United States of America, Applicant for Intervention, paragraph V thereof.

WITHERSPOON WITHER-
SPOON & KELLEY

By W. V. KELLEY

Attorneys for Complainant
and Petitioner.

Copy received this 21st day of July, 1942.

THOS. A. E. LALLY,

Attorneys for C. P. Robbins

Copy received this 21st day of July, 1942.

EDWARD M. CONNELLY

Attorneys for Kuhl & United
States

[Endorsed]: Filed July 21 1942. [43]

[Title of Court and Cause.]

MOTION TO MAKE MORE DEFINITE AND
CERTAIN OR FOR A BILL OF PARTICULARS

Comes now the complainant and petitioner and moves the Court for an Order requiring United States of America, Applicant for Intervention, to make its Answer in Intervention more definite and certain as follows:

I.

As to paragraph IV by stating the date and by whom an alleged writ of execution was served upon the Investment and Securities Co., and by furnishing a copy of return of service.

If the foregoing motion is denied, but not otherwise, the complainant and petitioner moves the Court to require the Applicant for Intervention herein to furnish the information sought by Bill of Particulars.

This Motion is based upon the records and files herein and upon the affidavit of W. V. Kelley, one of the attorneys for complainant and petitioner.

WITHERSPOON, WITHER-
SPOON & KELLEY.

By W. V. KELLEY,

Attorneys for Complainant
and Petitioner.

State of Washington,
County of Spokane—ss.

W. V. Kelley, being first duly sworn on oath, deposes and says:

That he is one of the attorneys for the complainant and petitioner and makes this affidavit in support of the foregoing Motion to Make More Definite and Certain or for Bill of Particulars; that the information requested is necessary for the proper preparation of complainant and petitioner's case, is not within their knowledge or that of affiant, and that said motion is not made for delay.

W. V. KELLEY.

Subscribed and sworn to before me this 21st day of July, 1942. [44]

[Notarial Seal] WILLIAM G. ENNIS,
Notary Public in and for the State of Washington,
residing at Spokane.

Copy received this 21 day of July, 1942.

THOS. A. E. LALLY,

Attorneys for C. P. Robbins.

Copy received this 21st day of July, 1942.

EDWARD M. CONNELLY,

Attorneys for Kuhl & United
States.

[Endorsed]: Filed Jul. 21, 1942. [45]

[Title of Court and Cause.]

MOTION TO MAKE MORE DEFINITE AND
CERTAIN OR FOR BILL OF PARTICULARS

Comes now the complainant and petitioner and moves the Court for an Order requiring defendant

Frank J. Kuhl, Collector of Internal Revenue for Wisconsin, to make his Answer more definite and certain as follows:

I.

As to paragraph 7 by stating the name of the officer or officers, representative or representatives, who is or are alleged to have procured the agreement of July 27, 1937; by stating what the alleged wrongful acts, conduct and representations consisted of; by stating what were the alleged wrongful acts, conduct and representations and when and where the same are alleged to have been made; by stating what officer or officers, representative or representatives are alleged to have acted in bad faith and what threats were made, by whom and where, so that the said Rosebush was wrongfully induced to refrain from submitting the agreement to the Internal Revenue officials before execution thereof.

II.

As to paragraph 10, by stating how said Rosebush is alleged to have undertaken to transfer his rights in said stock and assessment on October 7, 1935 to his wife; that if said alleged attempted transfer was by virtue of a written instrument, to furnish a copy thereof.

If the foregoing motion is denied, but not otherwise, the complainant and petitioner moves the Court to require the defendant to furnish the information sought by Bill of Particulars.

This Motion is based upon the records and files

herein and upon the affidavit of W. V. Kelley, one of the attorneys for complainant and petitioner.

WITHERSPOON, WITHER-
SPOON & KELLEY.

By W. V. KELLEY,

Attorneys for Complainant
and Petitioner. [46]

State of Washington,
County of Spokane—ss.

W. V. Kelley, being first duly sworn on oath, deposes and says:

That he is one of the attorneys for the complainant and petitioner and makes this affidavit in support of the foregoing Motion to Make More Definite and Certain or for Bill of Particulars; that the information requested is necessary for the proper preparation of complainant and petitioner's case, is not within their knowledge or that of affiant, and that said motion is not made for delay.

W. V. KELLEY.

Subscribed and sworn to before me this 21st day of July, 1942.

[Notarial Seal] WILLIAM G. ENNIS,
Notary Public in and for the State of Washington,
residing at Spokane.

Copy received this 21st day of July, 1942.

THOS. A. E. LALLY,

Attorneys for C. P. Robbins.

Copy received this 21st day of July, 1942.

EDWARD M. CONNELLY,
Attorney for Kuhn & United
States.

[Endorsed]: Filed Jul. 21, 1942. [47]

[Title of Court and Cause.]

MOTION TO STRIKE

Complainant and petitioner moves the Court to strike from the Answer of defendant Frank J. Kuhl, Collector of Internal Revenue for Wisconsin, the following:

I.

From paragraph 7 thereof the words "that said agreement of July 27, 1937 was drawn by attorneys for the Investment and Securities Company which knew Rosebush was without the advice of counsel in the premises and did not intend to prefer it as against the United States".

II.

The second and last sentence of paragraph 8.

III.

From paragraph 10 the following: "that garnishment also was issued in connection with said judgment under date of March 20, 1942, directed to Charles P. Robbins and was duly served upon him".

on the ground that the same are redundant, immaterial and impertinent.

WITHERSPOON, WITHER-
SPOON & KELLEY.

By W. V. KELLEY,
Attorneys for Complainant
and Petitioner.

Copy received this 21st day of July, 1942.

THOS. A. E. LALLY,
Attorneys for C. P. Robbins.

Copy received this 21st day of July, 1942.

EDWARD M. CONNELLY,
Attorneys for Kuhn & United
States.

[Endorsed]: Filed Jul. 21, 1942. [48]

[Title of Court and Cause.]

ORDER DENYING MOTION TO MAKE MORE
DEFINITE AND CERTAIN OR FOR A
BILL OF PARTICULARS

This matter coming on for hearing before the above-entitled Court on this 28th day of August, 1942, and the Investment and Securities Company being represented by William V. Kelley of Witherspoon, Witherspoon and Kelley, its attorneys, and the defendant Charles P. Robbins being represented by Thomas A. E. Lally, and the United States of America being represented by Harvey Erick-

son, Assistant United States Attorney, and the Court being fully advised in the premises,

It Is Ordered, Adjudged and Decreed that the motion of the plaintiff to strike Paragraph five (5) from the answer in intervention of the United States is denied.

It Is Further Ordered that the motion of the plaintiff to make Paragraph four (4) of the answer in intervention of the United States more definite and certain by stating the date upon which the return of execution was served upon the Investment and Securities Company is also denied.

It Is Further Ordered that the pre-trial conference be held at which time the plaintiff's motion to strike and motion to make more definite and certain or for a bill of particulars as to the answer of Frank J. Kuhl, Collector of Internal Revenue for the District of Wisconsin, be considered and that no final action be taken upon said motion at this time.

Dated this 31 day of August, 1942.

L. B. SCHWELLENBACH,
United States District Judge.

Presented by:

HARVEY ERICKSON,
Assistant U. S. Attorney.

Approved as to form:

W. V. KELLEY,
Attorneys for Plaintiff.

[Endorsed]: Filed Aug. 31, 1942. [49]

[Title of Court and Cause.]

NOTICE THAT CHARLES P. ROBBINS,
SHAREHOLDERS AGENT HAS PAID AD-
DITIONAL SUMS INTO THE COURT
REGISTRY

To the above named Plaintiff, Defendant and Ap-
plicant for intervention:

Take notice that the above named Charles P. Robbins, Shareholders Agent for the shareholders of the Exchange National Bank of Spokane, Washington, has this date paid into the registry of the above court the additional sums \$1500.00 and \$750.00 and which sums were ordinarily payable to Judson G. Rosebush and which sums together with the sum of \$4,250.00 heretofore so paid by said Shareholders Agent, are so deposited so that the above Court may determine which of the above parties, Plaintiff, Defendant and Applicant for intervention, shall receive said sums.

Dated this 21st day of July, 1942.

THOS. A. E. LALLY,

Attorney for the above named
Charles P. Robbins, Share-
holders Agent.

EDWARD M. CONNELLY,
HARVEY ERICKSON,

Attorneys for defendant and
applicant.

Received copy hereof this 21st day of July, 1942.

WITHERSPOON, WITHER-
SPOON & KELLEY.

Attorneys for the Plaintiff.

[Endorsed]: Filed Jul. 20, 1942. [50]

[Title of Court and Cause.]

REPLY TO ANSWER OF CROSS DEFEND-
ANT CHARLES P. ROBBINS, SHARE-
HOLDERS' AGENT

Comes now complainant and petitioner Investment and Securities Co., and replying to Answer of Cross-Defendant Charles P. Robbins, Shareholders' Agent, and particularly to Paragraph 10 thereof, denies that complainant and petitioner is liable for or should pay any attorneys fees or expenses incurred by said Cross-Defendant Charles P. Robbins, Shareholders' Agent, in this cause.

Wherefore, Complainant and petitioner prays that Cross-Defendant Charles P. Robbins take nothing by his Answer and affirmative defenses as against complainant and petitioner, and that complainant and petitioner have judgment against said

Cross-Defendant as prayed for, and for its costs and disbursements incurred herein.

WITHERSPOON, WITHER-
SPOON & KELLEY.

By W. V. KELLEY,
Attorneys for Complainant
and Petitioner.

Copy received this 21 day of July, 19.....

THOS A. E. LALLY,
Attorneys for C. P. Robbins.

State of Washington,
County of Spokane—ss.

Geo. L. Kimmel, being first duly sworn, says:
That he is the Vice President of Investment and
Secucities Co., complainant and Petitioner; that he
has read the above and foregoing Reply, knows the
contents thereof and the same are true as he ver-
ily believes.

GEO. L. KIMMEL

Subscribed and sworn to before me this 20th day
of July, 1942.

(Notarial Seal) W. A. SCHMITZ,
Notary Public in and for the State of Washington,
residing at Spokane.

[Endorsed]: Filed Jul. 21, 1942. [51]

[Title of Court and Cause.]

REPLY OF CHARLES P. ROBBINS TO
ANSWER OF FRANK J. KUHL

Comes now the above Cross-Defendant, Charles

P. Robbins, Shareholders agent for the Shareholders of The Exchange National Bank of Spokane, Washington and in Reply to the Answer of Defendant Frank J. Kuhl, Collector of Internal Revenue for Wisconsin, admits, denies and alleges as follows:

—1—

Admits paragraph —1— thereof.

—2—

Admits paragraph —2— thereof.

—3—

Denies paragraph —3— thereof.

—4—

Denies paragraph —4— thereof.

—5—

Denies paragraph —5— thereof.

—6—

Denies paragraph —6— thereof.

—7—

Denies paragraph —7— thereof.

—8—

Denies paragraph —8— thereof except that this answering cross defendant has withheld payment of the money involved.

—9—

Denies paragraph —9— thereof.

—10—

Denies paragraph —10— thereof and each and every allegation, matter and thing therein contained, save that there was an attempted service of an alleged writ of fieri facias shown to but not served on this cross defendant, and admits that an alleged writ of garnishment was issued therein and directed to this cross-defendant and attempted to be served on him, but he specifically denies that either and both of said writs were in fact duly and lawfully served on him and denies [52] that the Court issuing them had jurisdiction of this cross defendant and denies that said Court had jurisdiction or authority to serve them or either of them on this cross defendant.

—11—

Does not have sufficient knowledge, or information as to the matters in paragraph —11— to form a belief and *therefor* denies the same.

—12—

Denies paragraph —12— thereof.

Wherefore Having Replied in Full, this cross defendant prays for the relief and attorney fee as his original pleading and complaint herein prayed for.

THOS. A. E. LALLY,

Attorney for Cross-Defendant.

State of Washington,
County of Spokane—ss.

Charles P. Robbins, being first duly sworn upon oath deposes and says that he is the Shareholders Agent of the Shareholders of the Exchange National Bank of Spokane, Washington, the Cross Defendant above named; that he has read the foregoing reply, knows the contents thereof and the same is true as he verily believes.

CHARLES P. ROBBINS.

Subscribed and sworn to before me this 28th day of July, 1942.

[Notarial Seal] THOS. A. E. LALLY,

Notary Public residing at
Spokane.

Received copy hereof this 28 day of July, 1942.

WITHERSPOON, WITHER-
SPOON & KELLEY.

Attorneys for the Plaintiff.

EDWARD M. CONNELLY,
HARVEY ERICKSON,

Attorneys for defendant and for intervenor, Frank
J. Kuhl, Collector of Internal Revenue for
Wisconsin and United States of America.

[Endorsed]: Filed Jul. 28, 1942. [53]

[Title of Court and Cause.]

MOTION FOR SUMMARY JUDGMENT

Comes now Edward M. Connelly, United States Attorney for the Eastern District of Washington, and Harvey Erickson, Assistant United States Attorney for said District, and move the Court for the entry of Summary Judgment under Court Rule 56B.

This motion is based upon the affidavit of Harvey Erickson hereto attached and upon the files and proceedings herein.

EDWARD M. CONNELLY,

United States Attorney.

HARVEY ERICKSON,

Assistant United States Attorney.

AFFIDAVIT

State of Washington,
County of Spokane—ss.

Harvey Erickson, being first duly sworn, upon oath deposes and says:

That he is Assistant United States Attorney for the Eastern District of Washington;

That the United States District Court for the Eastern District of Wisconsin in Civil Action No. 5079, has already determined that the tax lien of the United States attached as against the property of Judson G. Rosebush on February 18, 1934, upon receipt by the Collector of Internal Revenue of the assessment list for the aforesaid 1928 tax

liability; and the attempted transfer on October 7, 1935, of said stock, and the right to dividends thereon by the said Judson G. Rosebush to the said Barbara J. McNaughton Rosebush was without legal effect;

That on July 27, 1937, the Investment and Securities Company, through its agents, L. A. Stilson, Vice-President, and George L. Kimmel, Secretary, entered into an agreement with Judson G. Rosebush, whereby it was provided that the said Judson G. Rosebush would transfer to the said Investment and Securities Company any recovery that the said Rosebush might receive as a result of payments on stock assessments of the Exchange National Bank of Spokane, Washington. [54]

It was further provided in the agreement that the Collector of Internal Revenue has filed an order of distraint against the said Rosebush and that this assignment of July 27, 1937 is subsequent and junior to any lien against the said recovery that the said Collector of Internal Revenue may have acquired by virtue of such order of distraint. Said agreement is attached to the Answer of the United States in Intervention as Exhibit "B" thereto, and is admitted by counsel for the Investment and Securities Company to be a verbatim copy of the original agreement executed on July 27, 1937, by and between Judson G. Rosebush and the Investment and Securities Company.

HARVEY ERICKSON.

Subscribed and sworn to before me this 18th day of August, 1942.

(Notarial Seal) EDWARD M. CONNELLY,
Notary Public in and for the State of Washington,
residing at Spokane.

Received copy hereof this 18th day of August, 1942.

WITHERSPOON, WITHER-
SPOON & KELLEY.

Attorneys for Complainant in
Intervention, Investment
and Securities Co.

Received copy hereof this 18th day of August, 1942.

THOS. A. E. LALLY,
Attorney for Cross-Defend-
ant.

[Endorsed]: Filed Aug. 18, 1942. [55]

[Title of Court and Cause.]

PETITION TO HAVE SUPPLEMENTAL COM-
PLAINT FILED AND THAT PROCESS
ISSUE TO JUDSON G. ROSEBUSH AND
BARBARA J. McNAUGHTON ROSEBUSH

The above named Interpleader, Charles P. Robbins,
respectfully shows the Court:

—1—

That he has deposited in the registry and with the
clerk of the above entitled Court the sum of

\$6,500.00 which was ordinarily payable by him to Judson G. Rosebush who is and who was a shareholder of The Exchange National Bank of Spokane, Washington, an insolvent national banking association, because of assessments paid by said Rosebush on his liability as such shareholder and because of moneys collected by the said interpleader for the benefit of all of such shareholders who have so paid their said assessments.

—2—

That because said money was claimed by the above named Investment and Securities Co. and by the above named Frank J. Kuhl, as Collector of Internal Revenue for Wisconsin, and because each of them threatened interpleader with suit if he paid any of said money to the other, this interpleader filed his original petition herein, in the form of interpleader and thereafter deposited said sum in said registry, and the said Investment and Securities Co. and the said Collector of Internal Revenue for Wisconsin appeared herein and filed answer and pleadings alleging their respective rights to said money.

—3—

That about August 11th, 1942, interpleader first learned and had first reason to learn, in the taking of the deposition of said Judson G. Rosebush, that he had on October 7th, 1935, transferred or attempted to transfer to his wife Barber J. McNaughton Rosebush some or all of his right, title and interest in and to the said money payable to

him by the said interpleader as a result of the payment of said assessments.

—4—

That ever since said date interpleader has been attempting to have the said Judson G. Rosebush and wife execute a waiver and release of their claim and right, title and interest to said moneys and have had letters pass between them, and their attorneys and interpleader and his attorney; that the said Rosebush and wife never refused to execute such waiver and release until interpleader's attorney on September 26th, 1942, received a letter from the attorneys of the said [56] Rosebush and wife in which they refused to execute such a waiver or release and in which they suggested that said wife be joined as a party to this action.

—5—

That none of the facts regarding the claims of the said Rosebush and wife were known to interpleader at the time of filing his original bill herein and at the time he answered the pleading of the other two said claimants.

—6—

That if the said Rosebush and wife are not made party defendants to this action, and the Court makes disposition of said money, the said Rosebush and wife can and probably will institute suit therefor against this interpleader. Wherefore: This Interpleader Prays that the supplemental petition and complaint he filed with this motion in the above

Court be allowed to remain filed; that sixty day summons issue to each said Rosebush and wife if found out of the State of Washington and twenty day summons if found within said state, ordering them to appear and answer the same.

THOS. A. E. LALLY,

Solicitor for said Inter-
pleader.

State of Washington,
County of Spokane—ss.

Charles P. Robbins, being first duly sworn upon oath, deposes and says that he is the interpleader, petitioner named in the foregoing petition; that he has read the same, knows the contents thereof and the same is true as therein stated as he verily believes.

CHARLES P. ROBBINS,

Subscribed and sworn to before me this 29th day of September, 1942.

[Notarial Seal] THOS. A. E. LALLY,

Notary Public residing in
Spokane.

Received copy hereof this 5 day of October, 1942.

WITHERSPOON, WITHER-
SPOON & KELLEY,

Attorneys for Investment and
Securities Co.

EDWARD M. CONNELLY &
HARVEY ERICKSON,

Attorneys for Frank Kuhl,
Collector.

[Endorsed]: Filed Oct. 5, 1942. [57]

In the United States District Court for the Eastern
District of Washington, Northern Division

Number 235

INVESTMENT AND SECURITIES CO., a cor-
poration,

vs.

CHARLES P. ROBBINS, Shareholders Agent of
the Shareholders of the Exchange National
Bank of Spokane, *and* Insolvent National
Banking Association,

Interpleader and Cross Defendant

vs.

FRANK KUHL, Collector of Internal Revenue for
Wisconsin,

Defendant

vs.

JUDSON G. ROSEBUSH and BARBARA J.
McNAUGHTON ROSEBUSH,

Defendants

ORDER GRANTING PETITION OF CHARLES
P. ROBBINS, SHAREHOLDERS AGENT,
FILING SUPPLEMENTAL COMPLAINT
AND THAT PROCESS ISSUE

This cause coming on for hearing on this date
on the petition of Charles P. Robbins Shareholders
Agent of the *Sahre*holders of Exchange National
Bank, for this order and it appearing from said

petition that Judson G. Rosebush and Barbara J. McNaughton Rosebush his wife are proper and necessary parties to this action therefore it is

Ordered that the supplemental petition and complaint of said Charles P. Robbins, as such shareholders agent shall be filed and that the clerk of the above Court shall issue proper and appropriate summons therefor.

Done in open Court this 5 day of October, 1942.

L. B. SCHWELLENBACH

Judge.

Presented by

THOS A E LALLY

Attorney for said Charles P.
Robbins.

Approved as to form.

WITHERSPOON WITHER-
SPOON & KELLEY

Attorneys for Investment and
Securities Co.

EDWARD M. CONNELLY &
HARVEY ERICKSON

Collector.

[Endorsed]: Filed Oct 5 1942. [58]

[Title of Court and Cause.]

SUPPLEMENTAL PETITION AND
COMPLAINT

The above named Interpleader, Charles P. Robbins, as above described alleges against *against* the above named persons:

—1—

That Charles P. Robbins is the duly elected, qualified and acting shareholders Agent for the Shareholders of the Exchange National Bank of Spokane, Washington, an insolvent National Banking Association; that the above named Investment and Securities Co. is a corporation organized under the laws of the State of Washington with its principal place of business in Spokane, Washington; that the above named Frank Kuhl is collector of internal revenue for the State of Wisconsin; that the above named Judson G. Rosebush and Barbara J. McNaughton Rosebush are husband and wife married one to the other and are residents of Appleton, Wisconsin.

—2—

That all of the debts and obligations of the said association dues its creditors have heretofore been paid by the receiver thereof.

—3—

That said shareholders agent has reduced to cash all of the assets that were delivered to him by the Receiver of the said association and has made distribution of the greater part of said cash to the

shareholders of said association who have paid their stock assessment; that in said cash was the sum of \$6,500.00 ordinarily payable by said interpleader to the said Judson G. Rosebush because of such stock assessment paid by him to the receiver of said association; that because of the facts hereinafter set out, this interpleader in 1941 deposited in the registry of the above court and with the Clerk thereof the sum of \$6,500.00 aforesaid and filed his plea in the above court asking the Court to determine which claimant was entitled thereto.

—4—

That said Investment and Security Co. and said Frank Kuhl, Collector of Internal Revenue for Wisconsin, during 1941 at present and for some years prior have each made adverse claims to the said money and any additional money that this interpleader might thereafter have and that would ordinarily be payable to said Judson G. Rosebush; and threatened to sue this interpleader if he paid any of said sums to any one except the said respective claimant.

—5—

That since this interpleader filed his original petition herein the said Investments and Securities Co. and the said Frank Kuhl as such collector of internal [59] revenue have filed their pleadings herein setting out their respective claims to the said money;

—6—

That as this interpleader is informed and believes

and on information and belief alleges the facts to be that the said defendants Judson G. Rosebush and Barbara J. McNaughton Rosebush each or both of them assert some claim of right, title or interest in and to the said \$6,500.00 and such additional sums of money as said interpleader may have hereafter and ordinarily payable to the said Judson G. Rosebush.

—7—

That this interpleader does not know which of the said persons have the prior or valid right to the possession of the said moneys and will not know until the said defendants Judson G. Rosebush and Barbara J. McNaughton Rosebush file their answer or other pleading herein setting out their right, title and interest in and to said money and until the above Court shall have heard all of the evidence and facts relied upon and offered by the said Investment and Securities Co. the said Frank Kuhl, Collector of Internal Revenue for Wisconsin and the said Judson G. Rosebush and Barbara J. McNaughton Rosebush.

—8—

That the sum of \$250.00 and his costs is a reasonable sum to be allowed this interpleader as attorney fees from the said sum or from the unprevailing parties hereto.

Wherefore Interpleader Prays Decree, decreeing: which of the said persons or corporation is entitled to the said \$6,500.00 and such additional sum as he may have and ordinarily payable to the said

Judson G. Rosebush; that the said Judson G. Rosebush and Barbara J. McNaughton Rosebush and other parties hereto by answer or other appropriate pleading set out their right title, lien, equity and interest and ownership in and to any and all of said money; that if any of them fail to so plead and fail to establish their prior right or lien to said money that they be foreclosed and barred from thereafter asserting any claim thereto and from commencing any suit or action against the interpleader as such shareholders agent or otherwise to recover the same or any *aprt* or on account thereof; that he be allowed attorney fee in the sum of \$250.00 and his costs from said money or from such of the parties hereto as may have the inferior right to such money and for [60] such other relief as is just.

THOS A E LALLY

Attorney for Interpleader.

1123 Paulsen Bldg.

Spokane, Washington.

State of Washington

County of Spokane—ss.

Charles P. Robbins, being forst duly sworn upon oath deposes and says that he is the interpleader; that he has read the foregoing, knows the contents thereof and believes the same to be true.

CHARLES P. ROBBINS

Subscribed and sworn to before me this 28th day of Sept. 1942.

[Notarial Seal] THOS A. E. LALLY

Notary Public residing at
Spokane, Wash.

Received Copy Hereof This 5th day of October 1942 and Consent to the Filing Hereof.

WITHERSPOON WITHER-
SPOON & KELLEY

Attorneys for Investment and
Securities Co.

EDWARD M. CONNELLY &
HARVEY ERICKSON

Attorneys for Frank Kuhl,
Collector

[Endorsed]: Filed Oct 5 1942. [61]

[Title of Court and Cause.]

SUMMONS (Sixty days)

To the above named: Supplemental Defendants,
Judson G. Rosebush and Barbara J. McNaughton
Rosebush, his wife

You are hereby summoned and required to serve
upon

Witherspoon, Witherspoon & Kelley, Peyton Build-
ing, Spokane, Washington, Attorneys for In-
vestment and Securities Co. a corporation,

Thomas A. E. Lally, Paulsen Building, Spokane,
Washington, Attorney for Charles P. Robbins,
Shareholders' Agent of the Shareholders of
The Exchange National Bank of Spokane, an
insolvent National Banking Association,
and

Edward M. Connelly, United States Attorney, Spo-
kane, Washington, Attorney for Frank J. Kuhl,
Collector of Internal Revenue for Wisconsin

an answer to the supplemental petition and com-
plaint which is herewith served upon you, within
sixty days after service of this summons upon you,
exclusive of the day of service. If you fail to do so,
judgment by default will be taken against you for
the relief demanded in the supplemental petition
and complaint.

[Seal]

A. A. LaFRAMBOISE

Clerk of Court

By

Deputy Clerk

Dated October 6, 1942

RETURN ON SERVICE OF WRIT EASTERN
DISTRICT OF WISCONSIN, ss.

I hereby certify and return, that on the 13th day
of October 1942, I received the within summons
& and served them on the within names Judson
G. Rosebush & Barbara J. Rosebush by showing
them this summons and delivering to each personally

a true copy thereof, this 14th day of October 1942
at Appleton Wisconsin.

ANTON J. LUKASZEWICZ

United States Marshal.

By RUSSELL C. KNIGHT

Deputy United States
Marshal.

Marshal's Fees

Travel \$7.92

Service 4.00

11.92

Subscribed and sworn to before me, a
this day of 19....

.....

(Note.—Affidavit required only if service is made
by a person other than a United States Marshal or
his deputy.)

[Endorsed]: Filed Oct 19 1942. [62]

[Title of Court and Cause.]

MARSHAL'S RETURN OF SERVICE (SIXTY
DAY SUMMONS AND SUPPLEMENTAL
PETITION AND COMPLAINT)

I, Russell C. Knight being first duly sworn upon
oath deposes and says that at all times herein men-
tioned he was and now is a Deputy U. S. Marshal
of the United States District Court, Eastern Dis-
trict and says that on the 14th day of October,

1942 in the City of Appleton, Wis. and County of Outagamie, State of Wisconsin, I did personally served the 60 day summons and copy of Supplemental Petition and Complaint upon each Judson G. Rosebush and Barbara J. Rosebush, by delivering to and leaving with each a true copy thereof, on the 14th day of October A. D. 1942 at Appleton, Wisconsin.

ANTON J. LUKASZEWICZ

U. S. Marshal

By RUSSELL C. KNIGHT

Deputy

Service 4.00

Travel 7.92

\$11.92

[Endorsed]: Filed Nov 17 1942. [63]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division

No. 235

INVESTMENT AND SECURITIES COMPANY,
a corporation,

Plaintiff,

vs.

CHARLES P. ROBBINS, Shareholders' Agent of
the Shareholders of The Exchange National
Bank of Spokane, Washington,
Cross-Defendant,

FRANK J. KUHL, Collector of Internal Revenue
for Wisconsin,
Defendant,

UNITED STATES OF AMERICA,
Intervenor,

JUDSON G. ROSEBUSH and BARBARA J.
McNAUGHTON ROSEBUSH,
Defendants.

MOTION TO VACATE ORDER JOINING JUD-
SON G. ROSEBUSH AND BARBARA J.
McNAUGHTON ROSEBUSH AS DEFEND-
ANTS

Come now Edward M. Connelly, United States
Attorney for the Eastern District of Washington,
and Harvey Erickson, Assistant United States At-

torney for said District, and move the Court to vacate its order of October 5, 1942, granting the petition of Charles P. Robbins, Shareholders' Agent, to file a supplemental complaint against Judson G. Rosebush and Barbara J. McNaughton Rosebush as additional defendants;

And petitioners further move for the Court to strike the supplemental petition and complaint of Charles P. Robbins filed on said date.

This motion is based upon the records and files herein and the opinion of the United States District Court for the Eastern District of Wisconsin rendered in the case of United States of America v. Judson G. Rosebush, defendant, Charles P. Robbins, Shareholders' Agent for the Shareholders of Exchange National Bank of Spokane, Washington, garnishee-defendant, and Barbara J. McNaughton Rosebush, additional defendant.

EDWARD M. CONNELLY

United States Attorney

HARVEY ERICKSON

Assistant United States

Attorney [64]

Copy received this 23rd day of October, 1942.

THOS A E LALLY

Attorney for Charles P.

Robbins

[Endorsed]: Filed Oct 23 1942. [65]

[Title of Court and Cause.]

AFFIDAVIT RESISTANCE OF CHARLES P.
ROBBINS, SHAREHOLDERS AGENT TO
THE MOTION OF THE UNITED STATES
ATTORNEY TO VACATE THE ORDER
JOINING JUDSON G. ROSEBUSH AND
BARBARA J. McNAUGHTON ROSEBUSH

State of Washington

County of Spokane—ss.

Charles P. Robbins being first duly sworn upon oath deposes and says: that he is the above named Shareholders, Agent Cross-Defendant herein; that the supplemental complaint of this affiant against the parties above named and particularly against the said Judson G. Rosebush and Barbara J. McNaughton Rosebush and the Order permitting the filing and service of the same, was done with the permission of all of the parties hereto;

that there is no such case as cited by the United States Attorney in his motion to strike the order of this Court, in that this affiant was not a party to the said alleged or any other action in the United States District Court for the Eastern District of Wisconsin or elsewhere in which the said Judson G. Rosebush and Barbara J. McNaughton Rosebush or either of them were parties; that any opinion, order or judgment or decree in any action or suit involving any of the parties hereto was and is not res adjudicata as to the said two persons and this affiant because this affiant has never appeared in or been a party plaintiff or defendant in any action or suit in which any of said parties

was such a party save in the main suit at bar in which said order was issued; that the said supplemental petition and complaint of this affiant was served on the said Judson G. Rosebush and Barbara J. McNaughton Rosebush in the State of Wisconsin on October 12th 1942 by the United States Marshall; that affiant was informed of this fact by his attorney who received a defective return of service from said United States Marshall and which return was sent back to said marshall for proper execution;

that unless the filing and serving of said supplemental petition and complaint against the said Judson G. Rosebush and Barbara J. McNaughton Rosebush are permitted to stand and the said two persons forced to answer or default thereto, this affiant can be sued by them after the determination of the above main suit for the same identical money in suit herein and after the above Court shall have decreed herein that the same shall be paid to some of the other parties already a party herein; [66]

that the said supplemental petition and complaint will terminate all possible other suits by either or any of said parties against this affiant, and unless it is so finally determined herein he will be unable to terminate his trust as such Shareholders Agent and as such officer of and answerable to this Court; that except for the final disposition of the money he has deposited herein for the Court to finally dispose of, his duties as such officer and agent are now complete.

CHAS. P. ROBBINS

Shareholders Agent of the Shareholders of The
Exchange National Bank of Spokane, Wash.

Subscribed and sworn to before me this 27th day of October 1942.

[Notarial Seal] THOS A E LALLY

Notary Public residing in
Spokane, Wash.

THOS A E LALLY

Attorney for said Shareholders
Agent.

Received copy hereof this 27th day of October 1942.

WITHERSPOON, WITHER-
SPOON & KELLEY

Attorneys for Investment and
Securities Company.

EDWARD M. CONNELLY &
HARVEY ERICKSON

United States Attorney

[Endorsed]: Filed Oct 27 1942. [67]

[Title of Court and Cause.]

DECREE AGAINST SUPPLEMENTAL DE-
FENDANTS, JUDSON G. ROSEBUSH AND
BARBARA J. McNAUGHTON ROSEBUSH

This cause coming on for hearing on this date on oral motion of the Cross-Defendant, Charles P. Robbins, Shareholders Agent of the Shareholders of The Exchange National Bank of Spokane, Washington, for this decree, and it appearing to the Court that the supplemental petition and com-

plaint of said Cross Defendant together with sixty days summons issued out of this Court were personally served on the supplemental defendants, Judson G. Rosebush and Barbara J. McNaughton Rosebush, his wife; that no pleadings, answer or appearance was made by either of them herein; that after more than sixty days had elapsed after and exclusive of the day and date of service of said summons and complaint on them that default was entered herein; and the Court being advised in the premises, It Is Ordered and Decreed that said default is hereby approved; that neither of said Supplemental Defendants, Judson G. Rosebush and Barbara J. McNaughton Rosebush, his wife, has any right, title or interest in or to the \$6,500.00 which said Cross Defendant has paid into the registry of this court nor to any other sum or sums that he may hereafter pay into said registry, nor to any other sums that said Cross Defendant may have or may hereafter have as such Shareholders Agent and they and each of them are forever barred from asserting any claims or claim to, for or against any of said sums or against the said Shareholders Agent on account thereof.

Done in open Court this 12th day of January 1943.

L. B. SCHWELLENBACH

Judge

[Endorsed]: Filed Jan 12 1943. [68]

[Title of Court and Cause.]

ORDER DENYING MOTION OF UNITED
STATES OF AMERICA TO VACATE
JOINDER OF DEFENDANTS ROSEBUSH

This Cause Coming on for hearing on this date on the motion of The United States Attorney, on behalf of the United States of America and Frank J. Kuhl, Collector of Internal Revenue for Wisconsin, to vacate the order of this Court joining Judson G. Rosebush and Barbara J. McNaughton Rosebush, his wife as parties defendant herein, and after argument of Counsel, and it appearing that the Court has heretofore entered decree herein against the said Judson G. Rosebush and Barbara J. McNaughton Rosebush, his wife, and the Court being advised in the premises, it is ordered that the said motion is and the same be hereby denied.

Done in open Court this 13th day of January,
1943

L. B. SCHWELLENBACH
Judge.

[Endorsed]: Filed Jan 13 1943. [69]

[Title of Court and Cause.]

ORDER IN RE PRE-TRIAL HEARING

This matter comes on for hearing on a pre-trial conference, on the 12th and 13th days of January,

1943, Mr. William V. Kelley appearing as attorney for the plaintiff, Mr. Thomas A. E. Lally appearing as attorney for cross-defendant and interpleader, and Mr. Harvey E. Erickson appearing for defendant Frank J. Kuhl and the United States of America.

Motion of the United States for summary judgment presented and Denied.

Decree against supplemental defendants Judson G. Rosebush and Barbara J. McNaughton Rosebush, his wife, signed.

Motion of the United States of America to vacate order joining Judson G. Rosebush, et ux, as parties defendant, Denied. Order on said motion signed.

The motion of the Investment & Securities Company to make more definite and certain, directed to the answer of defendant Kuhl, was then presented and argued. In compliance with paragraph 1 of plaintiff's motion to make more definite and certain, directed to paragraph 7 of the answer of defendant Kuhl, said defendant introduced Defendant's Exhibits "1" to "14", which, with the deposition of Judson G. Rosebush, defendant asserts constitutes in its entirety its proof as to that portion of paragraph 7 of his answer, as was moved against by the plaintiff. Said exhibits are received in evidence subject to the right of the plaintiff to object as to their materiality and relevancy at the time of the trial.

In response to paragraph 2 of plaintiff's motion to make the answer of defendant Kuhl more definite and certain, said defendant asserts that its proof as

to how Judson G. Rosebush undertook to transfer his rights in the stock and assessment on October 7, 1935, to his wife, will be limited to testimony of said Rosebush on that point in his deposition.

Plaintiff's motion to strike from paragraph VII of the answer of the defendant Kuhl is Denied.

Plaintiff's motion to strike from paragraph 8 of the answer of the defendant Kuhl is Granted.

Defendant's Identification 15 is marked, plaintiff agreeing that it may be offered at the trial without objection because it is a photo- [70] static copy, but reserving all other objections.

Plaintiff's motion to strike from paragraph 10 of the answer of defendant Kuhl is Denied without prejudice to the plaintiff's right at the time of the trial to contend that the issuance of the writ of garnishment was ineffectual and of no legal consequence.

As to Paragraph 9 of the answer of the Defendant Kuhl, Defendant's Identification 16 is marked, with the understanding that when offered in evidence the plaintiff will raise no objection because they are photostatic copies and will require no further identification, but reserves all other objections, and it is also stipulated that the assessment list was received by the Collector of Internal Revenue at Milwaukee on February 18, 1934, and that there was filed with the Register of Deeds at Appleton, Wisconsin, and with the Clerk of the United States District Court at Milwaukee, in April, 1934, the Government's Notice of Lien, it being understood that by this admission the plaintiff

in no way admits the Government's contention as to the legal effect of said filings.

As to Paragraph 10 of the answer of Defendant Kuhl, the plaintiff admits that on November 27, 1941, judgment was entered in the United States District Court for the Eastern District of Wisconsin, against Judson G. Rosebush in the sum of \$37,220.85, on said Judson G. Rosebush's 1928 income tax.

As to complaint of the Investment & Securities Company, the allegations of Paragraphs 1, 2, 3, and 4 are admitted by all parties.

As to Paragraph 5 of said complaint, it is stipulated that wherever in the pleadings in this case reference is made to the sum of \$4,250.00, it shall be deemed to be \$6500.00.

As to Paragraph 6 of said complaint, Defendant Kuhl admits the allegations of said paragraph but asserts that the writ of fieri facias was valid.

As to Paragraph 10 of said complaint, all parties agree that the assignment was served on Charles P. Robbins by the Investment & Securities Company March 4, 1938.

As to Paragraph 12 of said complaint, it is admitted by all parties [71] that no notice of tax lien was filed in Spokane County or with the Clerk of this court prior to December 1, 1941.

It is admitted that the Government has no proof in support of its allegation in Paragraph 4 of its answer that the money was ever in the possession of the Investment & Securities Company.

As to the answer of Cross-Defendant Robbins, it is stipulated that if attorney's fees are allowed, they shall be fixed by The Court without submission of evidence.

This cause is set for trial on Tuesday, February 23, 1943, at 10 o'clock A. M.

Dated this 19 day of January, 1943.

L. B. SCHWELLENBACH

United States District Judge

Approved:

WILLIAM V. KELLEY

Attorney for Plaintiff

THOS. A E LALLY

Attorney for Cross-Defendant
Robbins

Approved as to Form Only

HARVEY ERICKSON

Attorney for Defendant Kuhl and United States
of America

[Endorsed]: Filed Jan 19 1943. [72]

[Title of Court and Cause.]

REPLY TO ANSWER OF DEFENDANT
FRANK J. KUHL

Comes now complainant and petitioner, Investment and Securities Co., and replying to Answer of Defendant, Frank J. Kuhl, denies all affirmative allegations, matters and things therein set forth

except as admitted in the Order In Re: Pre-Trial Conference of January 12 and 13, 1943.

Wherefore, Complainant and petitioner prays that defendant, Frank J. Kuhl, take nothing by his Answer and affirmative defenses as against complainant and petitioner and that complainant and petitioner have judgment against defendant Frank J. Kuhl as prayed for and for its costs and disbursements incurred herein.

WITHERSPOON WITHER-
SPOON & KELLEY

By W. V. KELLEY

Attorneys for Complainant
and Petitioner.

Copy Received this 28th of January, 1943.

EDWARD M. CONNELLY

United States Attorney
Attorneys for defendant

[Endorsed]: Filed Jan 28 1943. [73]

[Title of Court and Cause.]

REPLY TO ANSWER IN INTERVENTION
OF THE UNITED STATES OF AMERICA

Comes now complainant and petitioner, Investment and Securities Co., and replying to Answer In Intervention of applicant for intervention, United States of America, denies all affirmative allegations, matters and things therein set forth

except as admitted in the Order In Re: Pre-Trial Conference of January 12 and 13, 1942.

Wherefore, Complainant and petitioner prays that applicant for intervention, United States of America, take nothing by its Answer and affirmative defenses as against complainant and petitioner and that complainant and petitioner have judgment against applicant for intervention, United States of America as prayed for and for its costs and disbursements incurred herein.

WITHERSPOON WITHER-
SPOON & KELLEY

By W. V. KELLEY

Attorneys for Complainant
and Petitioner.

Copy received this 28th day of January, 1943.

EDWARD M. CONNELLY

United States Attorney
Attorneys for defendant

[Endorsed]: Filed Jan 28 1943. [74]

[Title of Court and Cause.]

STIPULATION COMPLAINANT AND PETI-
TIONER MAY AMEND REPLIES TO
ANSWERS

The parties stipulate that complainant and petitioner may amend its replies to the answer of defendant Frank J. Kuhl and to the answer in intervention of the United States of America

Dated this 13 day of February, 1943.

WITHERSPOON WITHER-
SPOON & KELLEY

W. V. KELLEY

Attorneys for Complainant
and Petitioner

EDWARD M. CONNELLY

HARVEY ERICKSON

Attorneys for Defendant and
United States of America

[Endorsed]: Filed Feb 13 1943. [75]

[Title of Court and Cause.]

AMENDED REPLY TO ANSWER IN INTER-
VENTION OF THE UNITED STATES OF
AMERICA

Complainant and petitioner, Investment and Securities Co., pursuant to stipulation and amending its reply to the answer in intervention of the United States of America, denies all affirmative allegations, matters and things therein set forth except as admitted in the order in re Pretrial Conference of January 12 and 13, 1943.

And for a further and separate reply, complainant and petitioner alleges:

I.

That the claim of United States of America to the sum of \$6500.00, or any other sums, deposited in the registry of this court by the cross-defendant

Charles P. Robbins, is barred by the provisions of Internal Revenue Code Section 276 (c), Title 26 U. S. C. A. Sec. 276 (c); that prior to December 1, 1941 no notice of a tax lien was filed either with the Clerk of the Federal District Court for the Eastern District of Washington, or the County Auditor of Spokane County, Washington; that more than six years have elapsed since the assessment list was received by the Collector of Internal Revenue at Milwaukee, Wisconsin, on February 18, 1934, and since the filing with the registrar of deeds at Appleton, Wisconsin, and with the Clerk of the United States District Court at Milwaukee in April, 1934, of the alleged Government's notice of Lien without any attempt to collect said tax alleged in defendant's answer by distraint or by court proceedings pursuant to Internal Revenue Code Section 276 (c), Title 26 U. S. C. A. Sec. 276 (c).

Wherefore complainant and petitioner prays that the United States of America take nothing by its answer in intervention and that complainant and petitioner have judgment against the United States of America as prayed for and for its costs and disbursements incurred herein.

WITHERSPOON WITHER-
SPOON & KELLEY

By W V KELLEY

Attorneys for Complainant
and Petitioner [76]

Copy received this 13th day of Feb, 1943.

EDWARD M. CONNELLY &

HARVEY ERICKSON

Attorneys for Defendants

[Endorsed]: Filed Feb 13 1943. [77]

[Title of Court and Cause.]

AMENDED REPLY TO ANSWER OF DEFENDANT FRANK J. KUHL

Complainant and petitioner, Investment and Securities Co., pursuant to stipulation and amending its reply to the answer of defendant Frank J. Kuhl, denies all affirmative allegations, matters and things therein set forth except as admitted in the order in re Pretrial Conference of January 12 and 13, 1943.

And for a further and separate reply, complainant and petitioner alleges:

I.

That the claim of defendant Frank J. Kuhl to the sum of \$6500.00, or any other sums, deposited in the registry of this court by the cross-defendant Charles P. Robbins, is barred by the provisions of Internal Revenue Code Section 276 (c), Title 26 U. S. C. A. Sec. 276 (c); that prior to December 1, 1941 no notice of a tax lien was filed either with the Clerk of the Federal District Court for the Eastern District of Washington, or the County

Auditor of Spokane County, Washington; that more than six years have elapsed since the assessment list was received by the Collector of Internal Revenue at Milwaukee, Wisconsin, on February 18, 1934, and since the filing with the registrar of deeds at Appleton, Wisconsin, and with the Clerk of the United States District Court at Milwaukee in April, 1934, of the alleged Government's Notice of Lien without any attempt to collect said tax alleged in defendant's answer by distraint or by court proceedings pursuant to Internal Revenue Code Section 276 (c), Title 26 U. S. C. A. Sec. 276 (c).

Wherefore complainant and petitioner prays that defendant Frank J. Kuhl, take nothing by his answer and affirmative defenses as against complainant and petitioner and that complainant and petitioner have judgment against defendant Frank J. Kuhl as prayed for and for its costs and disbursements incurred herein.

WITHERSPOON WITHER-
SPOON & KELLEY

By W. V. KELLEY

Attorneys for complainant
and petitioner [78]

Copy received this 13th day of Feb., 1943.

EDW. M. CONNELLY &
HARVEY ERICKSON

Attorneys for Defendant.

[Endorsed]: Filed Feb 13 1943. [79]

In the United States District Court for the Eastern
District of Washington—Northern Division

No. 235

INVESTMENT AND SECURITIES COMPANY,
a corporation

Plaintiff,

vs.

CHARLES P. ROBBINS, Shareholders' Agent of
The Shareholders of the Exchange National
Bank of Spokane, Washington,
Cross-Defendant and Interpleader

vs.

FRANK J. KUHL, Collector of Internal Revenue
for Wisconsin,

Defendant

UNITED STATES OF AMERICA,
Additional Intervenor

vs.

JUDSON G. ROSEBUSH and BARBARA J.
McNAUGHTON ROSEBUSH, his wife,
Supplemental Defendants

Before The Honorable L. B. Schwellenbach, Judge
of the above-styled Court and District.

On February 23, 1943.

Appearances:

For the Plaintiff:

Witherspoon, Witherspoon and Kelley,
Counsel.

For the Cross-Defendant:

Mr. Thomas A. E. Lally,
Counsel.

For the Additional Intervenor, U. S. A. and Defendant, Frank J. Kuhl, Collector of Internal Revenue District of Wisconsin:

Mr. Harvey Erickson,
Assistant U. S. District Attorney for the
Eastern District of Washington.

Reporter:

J. J. Cole.

STATEMENT OF FACTS [80]

The above entitled cause coming on for hearing and for trial before the Honorable L. B. Schwellenbach, Judge of the above-styled Court, and all parties having announced ready for trial, the following proceedings were had:

On January 12 and 13, 1943, this matter came on for hearing on a pre-trial conference, Mr. William V. Kelley appearing as attorney for the plaintiff, Mr. Thomas A. E. Lally, appearing as attorney for cross-defendant and interpleader, and Mr. Harvey E. Erickson appearing for defendant Frank J. Kuhl, and the United States of America, and the following "order in re pre-trial hearing"

was signed by the Court on the 19th day of January, 1943.

Motion of the United States for summary judgment presented and denied.

Decree against supplemental defendants Judson G. Rosebush and Barbara J. McNaughton Rosebush, his wife signed.

Motion of the United States of America to vacate order joining Judson G. Rosebush, et ux. as parties defendant, denied. Order on said motion signed.

The motion of the Investment & Securities Company to make more definite and certain, directed to the answer of defendant Kuhl was then presented and argued. In compliance with paragraph 1 of plaintiff's motion to make more definite and certain, directed to paragraph 7 of the answer of defendant Kuhl, said defendant introduced Defendant's exhibits '1' to '14' which, with the deposition of Judson G. Rosebush, defendant, asserts constitutes in its entirety is [82] proof as to that portion of paragraph 7 of his answer, as was moved against by the plaintiff. Said exhibits are received in evidence subject to the right of the plaintiff to object as to their materiality and relevancy at the time of the trial.

In response to paragraph 2 of plaintiff's motion to make the answer of defendant Kuhl more definite and certain, said defendant asserts that its proof as to how Judson G. Rosebush undertook to transfer his rights in the stock and assessment on October 7, 1935, to his wife, will be limited to tes-

timony of said Rosebush on that point in his deposition.

Plaintiff's motion to strike from paragraph VII of the answer of the defendant Kuhl is Denied.

Plaintiff's motion to strike from paragraph 8 of the answer of the defendant Kuhl is Granted

Defendant's Identification 15 is marked, plaintiff agreeing that it may be offered at the trial without objection because it is a photostatic copy, but reserving all other objections.

Plaintiff's motion to strike from paragraph 10 of the answer of defendant Kuhl is Denied without prejudice to the plaintiff's right at the time of the trial to contend that the issuance of the writ of garnishment was ineffectual and of no legal consequence.

As to Paragraph 9 of the answer of the defendant Kuhl, Defendant's Identification 16 is marked, with the understanding that when offered in evidence the [83] plaintiff will raise no objection because they are photostatic copies and will require no further identification, but reserves all other objections, and it is also stipulated that the assessment list was received by the Collector of Internal Revenue at Milwaukee on February 18, 1934, and that there was filed with the Register of Deeds at Appleton, Wisconsin, and with the Clerk of the United States District Court at Milwaukee, in April, 1934, the Government's Notice of Lien, it being understood that by this admission the plaintiff in no way admits the Government's contention as to the legal effect of said filings.

As to Paragraph 10 of the answer of defendant Kuhl, the plaintiff admits that on November 27, 1941, judgment was entered in the United States District Court for the Eastern District of Wisconsin, against Judson G. Rosebush in the sum of \$37,-220.85, on said Judson G. Rosebush's 1928 income tax.

As to complaint of the Investment & Securities Company, the allegations of Paragraphs 1, 2, 3. and 4 are admitted by all parties.

As to Paragraph 5 of said complaint, it is stipulated that wherever in the pleadings in this case reference is made to the sum of \$4250.00, it shall be deemed to be \$6500.00.

As to Paragraph 6 of said complaint, Defendant Kuhl admits the allegations of said paragraph but asserts that the writ of fieri facias was valid.

As to Paragraph 10 of said complaint, [84] all parties agree that the assignment was served on Charles P. Robbins by the Investment & Securities Company March 14, 1938.

As to Paragraph 12 of said complaint, it is admitted by all parties that no notice of tax lien was filed in Spokane County or with the Clerk of this court prior to December 1, 1941.

It is admitted that the Government has no proof in support of its allegation in Paragraph 4 of its answer that the money was ever in the possession of the Investment & Securities Company.

As to the answer of Cross-Defendant Robbins, it is stipulated that if attorney's fees are allowed, they shall be fixed by the Court without submission of evidence.

This cause is set for trial on Tuesday, February 23, 1943, at 10 o'clock A. M.

Mr. Kelley: Your Honor, would it be in order for the record to show that all the allegations of the complaint in intervention and petition for relief on behalf of the Investment & Securities Company are admitted, and the additional fact that \$6500.00 is the sum that is now on deposit——

Judge Schwellenbach: You said "All of the allegations", shouldn't you say "All the facts alleged"——

Mr. Kelley: Yes, your Honor, I should have said all of the facts alleged; that the sum of \$6500.00 is now on deposit in Court. [85]

Mr. Erickson: I don't know if I can say that or enter into a stipulation, if that is what Mr. Kelley asks, to that effect, but I will say so far as the facts of his complaint right now there is no dispute. The only thing is as to the conclusions of law that he has interspersed with his facts.

L. A. STILSON,

a witness called for and on behalf of the plaintiff,
having been duly sworn, testified as follows:

Direct Examination

By Mr. Kelley:

Q. State your name please.

A. L. A. Stilson.

Q. What is your occupation, Mr. Stilson?

A. At present I am with the Old National Bank.

(Testimony of L. A. Stilson.)

Q. Were you formerly associated with the Investment & Securities Company? A. I was.

Q. For what period of time?

A. From 1933 until January 1942.

Q. In what capacity?

A. As vice president.

Q. Are you the officer and individual of the Investment & Securities Company who had the Judson G. Rosebush account? A. That's right.

Q. Briefly, inform the Court as to how the Investment & Securities Company got that account and what was the [86] situation leading up to the execution of the contract of July 27, 1937?

A. Well, the account came to us from the Old National Bank in 1933 when the bank was re-organized.

Judge Schwellenbach: I think the record might as well show the Investment & Securities Company is a company for the collection and liquidation of unsatisfied accounts at the time the Old National Bank went into the hands of the Conservator.

Mr. Kelley: That is right.

Judge Schwellenbach: And that there came in as one of the items transferred by the Old National Bank this account.

Mr. Kelley: That's right.

Q. Then the Judson Rosebush item came in as one of the accounts transferred to you by the Old National Bank? A. That is correct.

Q. What was the status of that account immedi-

(Testimony of L. A. Stilson.)

ately prior to the execution of the contract on July 27, 1937?

A. I don't understand exactly——

Q. What was owing on the account?

A. Oh, there was—originally it was \$100,000, and we foreclosed on the collateral to the amount of about \$25,000.00, which left remaining a balance of approximately \$75,000.00 with a large amount of accrued interest.

Q. When was your attention directed to the fact that Mr. Rosebush had paid assessments on certain shares of the Exchange National Bank of Spokane? [87]

A. We had a file of his financial statements, and as I recall it I ran into the fact he had formerly owned stock in the Exchange National in some of his old statements, and I heard the Exchange National would pay its creditors in full, and have some over to pay over to the former stockholders who had paid their assessments.

Q. Were you desirous of having the Rosebush rights by virtue of the assessments he had paid on the Exchange National Bank assigned to the Investments & Securities Company for his indebtedness? A. Yes.

Q. What steps did you take to effectuate that?

A. We asked him to pledge it as additional security to his indebtedness. At the time we foreclosed the stock that had been pledged there was a little argument on the sufficiency of our foreclosure and he asked for some concession, the right to re-

(Testimony of L. A. Stilson.)

deem the stock, or if it sold for more than they were bid in at the sale, and in general negotiations we should agree, if he would give us additional security or collateral in the form of the Exchange claim, we would give him certain concessions and the right to redeem the stock that had been foreclosed, or any overplus if sold within a reasonable period of time.

Q. You were attempting to collect the debt Rosebush owed your institution? A. That's right.

Q. You had considerable correspondence with Rosebush between the date of March 29, 1937, until the contract [88] of July 27, 1937, was executed.

A. Oh yes, I had correspondence with Mr. Rosebush for ten years.

Q. In having such correspondence, what was your practice at the Investment & Securities, you as an officer, with respect to signing letters and so forth?

A. Well, ordinarily the letters were dictated to the stenographer and returned for correction and signature, and I would sign the original and either sign or initial the copies as a general rule.

Q. Directing your attention to defendant's exhibits marked for identification Exhibits "2" to "15" inclusive, look those over and state whether or not they appear to be photostatic copies of some of the correspondence you had with Mr. Rosebush during that period.

Judge Schwollenbach: "15" was not admitted.

(Testimony of L. A. Stilson.)

You admitted "1" to "14" inclusive, but reserved the right to object to "15", Mr. Kelley.

Mr. Kelley: I see. Thank you, your Honor.

Witness: These exhibits "2" to "12" seem to be all photostatic copies of the original letters, except exhibit "10", which was written by Mr. Kimmel, who was secretary of the Investment & Securities. These other two exhibits—"14" I believe, is deleted pages of the agreement when it was corrected, and "15" is apparently a letter from Mrs. Rosebush to Mr. Rosebush.

Q. Directing your attention to defendant's exhibit "10" being a letter from Mr. Kimmel to Rosebush, June 30, [89] 1937—

Judge Schwellenbach: Exhibits "1" to "14" are in evidence?

Court Clerk: They were just marked for identification.

Mr. Kelley: Well then, I didn't know that. Are they admitted now?

Judge Schwellenbach: They are admitted, but you can re-open if you want to, and move they be stricken.

Mr. Kelley: No, on the contrary, I will offer them.

Judge Schwellenbach: You don't need to do that.

[Printer's Note: Defendants' Exhibits Nos. 2 to 14 are set out in full at pages 171 to 193 of this printed record.]

Q. Directing your attention to defendant's exhibit "10" being the letter of Mr. Kimmel to Mr.

(Testimony of L. A. Stilson.)

Rosebush under date of June 30, 1937, how did Mr. Kimmel happen to write that instead of yourself?

A. I was on vacation at the time.

Q. Did Mr. Kimmel have anything to do with the details of this Judson Rosebush account?

A. No, I handled the account.

Q. Directing your attention to defendant's Exhibit "5" being the letter Rosebush to Stilson, under date of April 20, 1937, did you answer that letter?

A. I believe that was answered—I recall that. The offer was turned down. I think our file will show when it was turned down by letter or——

Q. Handing you plaintiff's exhibit marked "A" for [90] identification I will ask you to state what that is.

A. This is an office copy of a letter dated April 28, written by me and addressed to Mr. Rosebush at Appleton, Wisconsin.

Q. Directing your attention to the second page, what is that in handwriting there?

A. Those are my initials.

Q. What are they? A. L. A. S.

Q. Who wrote that, can you tell by examining the exhibits who typed the letter for you?

A. Yes, the stenographer's initial "G" refers to Miss Galbraith who was stenographer in our office about that time.

Q. What handwriting is that "Betty Galbraith"?

(Testimony of L. A. Stilson.)

A. I don't know whose handwriting that is.

Mr. Kelley: I would like to offer plaintiff's Exhibit "A".

Mr. Erickson: I would like to ask a few questions on voir dire.

Judge Schwellenbach: Very well.

Questions on Voir Dire

Q. (By Mr. Erickson) Mr. Stilson, do you have an independent recollection at this time of writing this letter at that time?

A. Yes, I have a general recollection of refusing that offer and I wrote a rather harsh letter, frankly, more or less giving him a certain length of time in which to [91] conform.

Q. According to your practice in the office there, you signed the letters and the girl in the office mailed them? A. Yes.

Q. And according to the indication on the letter, it was not sent by registered mail?

A. No, it would be so marked if sent by registered mail.

Q. And there is no such mark on it?

A. No such mark.

Mr. Erickson: I object to the letter on the grounds previously specified—the demand was made upon us too late, and the deposition of Mr. Rosebush does not definitely fix any such letter as having been received, and at the time of the taking of the deposition last August, there was ample time to question Mr. Rosebush by the plaintiff more thoroughly on this letter, and, furthermore, in the

(Testimony of L. A. Stilson.)

pre-trial conference this letter was not brought up or intimated any such letter was in existence.

Judge Schwellenbach: From my understanding of the deposition as read, is that he showed the letter to Mr. Rosebush and Mr. Rosebush said he had some recollection of a letter of that sort and he didn't think he turned it over to the government. He showed it to you, Mr. Erickson, and it's true that notice to produce was given very late, but I can't see where there is [92] any prejudice. The attention of the government was called to it. Mr. Rosebush indicated he had received a letter something like this, and Mr. Stilson's testimony he sent the letter. I think I will allow it.

Plaintiff's identification "A" letter, April 28th, received in evidence and becomes Plaintiff's Exhibit "A".

[Printer's Note: Plaintiff's Exhibit "A" set out in full at page 164 of this printed record.]

Judge Schwellenbach: What is the next letter after the 28th?

Mr. Kelley: June 2, defendant's exhibit "6".

Judge Schwellenbach: Let me see defendant's letter, Rosebush wrote to you and then your letter—wasn't there another letter from Rosebush too. In other words, he wrote you on April 20th to the effect he would like to buy this Inland Empire Paper stock, you answer that on April 28th. Then in your letter of the 2nd you say "In connection

(Testimony of L. A. Stilson.)

with your recent letter * * * * I do not believe our trustees would be in favor of such a sale at any price * * * *” —It seems to me that would indicate you received a letter after you turned him down on April 28th.

Witness: That’s right.

Judge Schwellenbach: Then you refer to a “recent” letter—that is some indication of a letter received from him in response to your letter of April 28th.

Witness: I don’t recall having seen any in the file.

Mr. Kelley: I wonder if you’d go through [93] that again——

Judge Schwellenbach: When you say in your letter “This agreement is in accordance with our understanding”——

Witness: Mr. Rosebush was in the office on a trip out here about the time we were negotiating that agreement and I know we discussed it to a certain extent orally at the time of one of the visits. I couldn’t give you the date of that visit, but I do remember one afternoon he was in the office and we discussed such an agreement quite thoroughly.

Mr. Kelley: Q. Did he or did he not ever state to you he had consulted with attorneys in the east with respect to drawing such an agreement of July 27, 1937?

A. I had a good many talks with Mr. Rosebush, they were rather extended; sometimes it would be two or three hours. I remember a reference in one

(Testimony of L. A. Stilson.)

of the conferences to Brezeau & Graves who acted for him—some eastern attorneys and he spoke of consulting them concerning such an agreement in general terms, the date of that statement I can't give you, we had too many conferences and talks.

Q. Well, directing your attention to Exhibit "C" for identification attached to the deposition to Judson G. Rosebush under date of August 11, 1942, being a letter in longhand and under date of May 8, 1937, state whether you received that.

A. Yes, I recall this letter.

Q. Were these conversations somewhere around the date shown in that exhibit? [94]

A. Yes, they were while we were negotiating the contract which extended from some time in March until it was actually signed, I believe, in July. He was out here on business and dropped in. That may have been more than one time. He frequently came out here at that time.

Q. You received that exhibit to which your attention has just been directed?

A. I have no independent recollection of having received it. I presume it came from our files.

Q. You recognize the hand writing?

A. Yes.

Q. And the handwriting is——

A. Mr. Rosebush's.

Mr. Kelley: I would like to offer it.

Mr. Erickson: It's already in evidence—it's already offered as part of the deposition.

Mr. Kelley: No, it isn't.

(Testimony of L. A. Stilson.)

Mr. Erickson: The deposition was ordered published.

Judge Schwellenbach: What do you intend to do about this deposition? It's published, that's true, but that doesn't make it part of the record.

Mr. Erickson: I intend to offer it as part of the record.

Judge Schwellenbach: Do you intend to offer the entire deposition?

Mr. Erickson: Yes, and all the attached exhibits. [95]

Judge Schwellenbach: Is there any particular reason for wanting to take it out of this deposition?

Mr. Kelley: No, your Honor, except I want to make sure I identify it properly for the record, and if admitted I wanted to ask the witness this question——

Q. Did you at any time, orally or in writing, at any place, agree with Judson G. Rosebush that the tax lien of the United States government arose by virtue of the assessment received in Milwaukee in February 1934 was a superior claim to your contract claim, the contract of July 27, 1937, did you ever so agree or admit?

A. We never agreed or admitted the government's claim was prior to ours, or considered it so.

Mr. Kelley: You may inquire.

(Testimony of L. A. Stilson.)

Cross Examination

By Mr. Erickson:

Q. You say you asked Mr. Rosebush to pledge his claim against the Exchange National Bank to you—did you use the word “assign” instead of “pledge”?

A. The assignment of it would be a pledge.

Q. You considered assignment would be the same as pledging.

A. Yes.

Q. And in the following correspondence you did use the term “assign”?

A. I presume it would be.

Q. And in this correspondence with Mr. Rosebush you do not recall whether or not Mr. Rosebush told you he had [96] the advice of counsel?

A. I recall at one conference now, the exact date of that conference I cannot recall, he stated his attorneys had said he better not sign that unless he had had something in it about the claim of the government?

Q. Do you recall the time Mr. Rosebush asked to submit this agreement to the Collector of Internal Revenue for the District of Wisconsin?

A. I do.

Q. You didn't agree with Mr. Rosebush's submission of the agreement to the Collector first?

A. I did not.

Q. Why not?

A. I felt the United States government and the Investment and Securities Company were both

(Testimony of L. A. Stilson.)

creditors of Mr. Rosebush and I felt this was an asset that was pledged to neither. If he went to them they would immediately attach it. It was a footrace who would get there first.

Judge Schwellenbach: Did he tell you Brezeau & Graves were his attorneys back there?

A. Oh no, he at different times had letters from Brezeau & Graves I believe, and I recall they did some work for him. They worked for firms with which he was connected and I think he at times discussed his personal affairs with them, but I couldn't say they were his personal attorneys.

Q. (By Mr. Kelley). By the way, you were making or attempting to make the collection of the Rosebush indebtedness so that payments would be made in part to the share- [97] holders of the Old National Bank?

Mr. Erickson: I object to that as immaterial and irrelevant.

Judge Schwellenbach: Objection sustained.

Mr. Kelley: I think that is all. Your Honor, I have Mr. George Kimmel of the Investment & Securities but if all of these Exhibits are admitted, it won't be necessary to have him identify that letter of June 30th, 1937.

Judge Schwellenbach: They are all in excepting you reserve the right to move to have them stricken on the ground they were not relevant or material and if you don't do that they still stay in.

Q. Mr. Stilson, what is the reason you didn't

(Testimony of L. A. Stilson.)

consider the United States government had a prior claim to your contract of July 27, 1937?

Mr. Erickson: I object to that as incompetent and immaterial—what he thinks.

Judge Schwollenbach: Objection overruled.

A. Well, at the time we first heard of this claim Mr. Rosebush had against the Exchange National I went to our attorneys and asked them if this was subject to the lien of the Department of Internal Revenue and they did a little briefing on it and told me they thought very probably it was not subject to it, and cited various legal points. [98]

Q. In short your conduct was on advice of counsel?

A. Yes, sir.

Mr. Kelley: You may inquire.

Mr. Erickson: No questions.

Mr. Kelley: That's our testimony, your Honor.

Mr. Erickson: I have no testimony other than—let's see—Exhibits 1 to 14 are received in evidence, I believe. I would like the reception in evidence of the other defendant's exhibits now, "15" and "16"—"16" has several parts to it.

Judge Schwollenbach: Defendant's "15" is——

Mr. Kelley: Letter, Rosebush to Robbins, isn't it, your Honor?

Judge Schwollenbach: You are offering that, Mr. Erickson?

Mr. Erickson: Yes.

Judge Schwollenbach: Any objections, Mr. Kelley?

Mr. Kelley: We have no objection if it can be agreed that the carbon copy that brought forth that letter can be admitted.

Mr. Erickson: I don't know anything about a carbon copy.

Judge Schwellenbach: Plaintiff's "B"—is that Robbins to Rosebush? [99]

Mr. Kelley: Yes.

Judge Schwellenbach: What is the date of that?

Mr. Kelley: June 10. I wonder if Mr. Erickson would agree to admit plaintiff's "B" at the same time?

Mr. Erickson: I don't see the materiality.

Mr. Kelley: The materiality is just that it goes to the continuity of the matter. The only reason Mr. Rosebush wrote the letter "15" was that Mr. Robbins had written him a letter. In other words, this wasn't voluntary.

Judge Schwellenbach: It may be admitted, defendant's "15" and plaintiff's "B". Now, defendant's "16"—what will we call that?

[Printer's Note: Defendant's Exhibit No. 15 is set out in full at page 193 of this printed record. Plaintiff's Exhibit "B" is set out in full at page 166 of this printed record.]

Mr. Erickson: That's the Collector's procedure in Wisconsin.

Court Clerk: It's plaintiff's "16", "16—E to R", inclusive.

Judge Schwellenbach: Any objection to that?

Mr. Kelley: I think not, your Honor. No objection.

Judge Schwellenbach: It may be admitted.

[Printer's Note: Plaintiff's Exhibits 16-E to 16-R are set out in full on pages 195 to 208 of this printed record.]

Mr. Erickson: That's our case then. Oh, the deposition, pardon me. I move for reception in [100] evidence of the deposition at this time and the Exhibits attached thereto.

Mr. Kelley: The only thing is, your Honor, I hoped it would be read into the evidence and as we went along if there was anything objectionable I would have the opportunity to object.

Judge Schwellenbach: That is the customary way to do it.

Mr. Erickson: Yes, if Mr. Kelley wants to take the time to do it, if there is anything of that nature in there.

Mr. Kelley: Well, I can, if I had the opportunity to examine it—it would be a few days probably.

Judge Schwellenbach: Can't the record show the deposition of Mr. Rosebush may be copied by the reporter as part of the evidence in this case, then if between now and the next time the matter comes up you decide you want to object to any portions then the reporter can come back and you may do so, otherwise it won't be necessary for her to come back. There are two Exhibits, the contract attached to the deposition——

Mr. Kelley: Hasn't that been admitted?

Mr. Erickson: Yes, that has been admitted already.

Judge Schwellenbach: Then there is that letter marked plaintiff's Exhibit "C"—you might take out the letter "C" and mark it as plaintiff's Exhibit "C", [101] letter of Mr. Rosebush to Mr. Stilson, May 8, 1937. There is no reason for putting the Attorney General's letter in.

[Printer's Note: Plaintiff's Exhibit "C" is set out in full at page 167 of this printed record.]

Mr. Kelley: Only on this point, they don't list the letter of April 28th in it—for whatever it's worth that omission ought to be noted.

Judge Schwellenbach: He didn't know whether he turned it over to the Government or not, and Mr. Erickson's statement here on your notice to produce, the other day, they didn't have it.

Mr. Kelley: I would like to inquire if Mr. Erickson cares to interrogate Mr. Stilson or Mr. Kimmel or if they may be excused.

Mr. Erickson: They may be excused.

Judge Schwellenbach: Have you any testimony, Mr. Lally?

Mr. Lally: No, your Honor. May I say this: Prior to any pleadings being served by either the Investment & Securities Company or the Collector of Internal Revenue or the Government, Charles Robbins filed a Bill of Interpleader, alleging in substance the undisputed fact that he had this money which he was ready to disburse to whoever owned it, and he was threatened with suit by both of these parties, and we ask that we be allowed attorney fees

and our costs, and I have forgotten the amount of attorney fees alleged but will not take the time to introduce any evidence on it.

Judge Schwellenbach: The other two counsel have stipulated I can fix attorney fees without [102] submission of testimony, would you stipulate to that?

Mr. Lally: Yes.

Judge Schwellenbach: Go ahead, briefly, Mr. Kelley, with your argument.

Whereupon, a short argument was made to the Court by Mr. Kelley and Mr. Erickson, during which time plaintiff's Exhibit 'D', certified copy tax lien filed in the office of the County Registry, of Iron County, Michigan, was offered and received in evidence.

[Printer's Note: Plaintiff's Exhibit "D" is set out in full at page 168 of this printed record.] [103]

DEPOSITION OF JUDSON G. ROSEBUSH,

Taken at the office of Witherspoon, Witherspoon & Kelley, Peyton Building, Spokane, Washington, August 11, 1942, at two p.m.

At the time of the taking of the above deposition plaintiff was represented by Mr. W. V. Kelley, of Counsel, and cross-defendant by Mr. Thomas A. E. Lally, Counsel, and the intervenor by Mr. Harvey Erickson, assistant U. S. District Attorney for the Eastern District of Washington. The deposition was taken pursuant to notice theretofore served.

JUDSON G. ROSEBUSH,

having been sworn to tell the truth, the whole truth and nothing but the truth, testified as follows on

Direct Examination

By Mr. W. V. Kelley.

Q. Your name is Judson G. Rosebush?

A. Yes.

Q. And whereabouts do you live?

A. Appleton, Wisconsin.

Q. Are you the same Judson G. Rosebush who was named as defendant in the cause entitled "United States of America, plaintiff, versus Judson G. Rosebush, defendant, and Barbara J. McNaughton Rosebush, additional defendant, in the District Court of Wisconsin, in the Eastern District of Wisconsin", being "Civil Action No. 5079"? A. I am. [104]

Q. Briefly, in that action, judgment in the original complaint against you has been entered in the amount of \$37,220.85.

A. As of June 16, 1940, yes.

Q. How long have you been a resident of Appleton, Wisconsin? A. Since 1903.

Q. Mr. Rosebush, referring to that action, do you recall the date of the judgment?

A. Yes, June 16, 1940.

Q. What is the amount of your indebtedness to the United States now because of that action?

A. Thirty-seven thousand dollars, plus interest.

Q. What is the amount of your indebtedness, roughly, to the Investment Securities Company?

(Deposition of Judson G. Rosebush.)

A. About seventy-thousand dollars.

Q. That is the Investment & Securities Company, a Washington corporation, that is liquidating the percentage of the frozen assets of the Old National Banking institution? A. Yes.

Q. Directing your attention, Mr. Rosebush, to a copy of the answer in intervention in the cause entitled "Investment & Securities Company versus Charles P. Robbins, Shareholders' Agent in the District Court of the United States for the Eastern District of Washington, Northern Division" and specifically to Exhibit "B" which is attached and made a part of said answer in intervention—if you will take the time to examine this—is that a copy of a certain agreement under [105] date of July 27, 1937, entered into by and between the Investment & Securities Company and yourself?

Mr. Kelley: I have an extra copy here and you can mark it and attach it to the deposition.

Mr. Lally: Do you have a duplicate in the pleadings.

Mr. Kelley: I think not.

Witness: This looks like, but I could not tell without specifically verifying it that it is.

Mr. Erickson: Do you have the original document.

Mr. Kelley: No, I don't Harvey, not right here.

(Mr. Lally hands document to witness).

Mr. Kelley: Let the record show that Mr. Lally representing the cross-defendant Mr. Charles B.

(Deposition of Judson G. Rosebush.)

Robbins, Shareholders' Agent, shows the witness an executed copy.

Mr. Lally: Let him check that copy briefly with this.

Witness: Of course I haven't any doubt about it but I wouldn't want to say this is a duplicate of the other without having it before me.

Mr. Kelley: That's right.

(Witness checks copy handed him by Mr. Kelley with original, executed copy, handed him by Mr. Lally).

Witness: Well, they are identical.

Q. Back in July, 1937, July 27, 1937, you were indebted to the Investment & Securities Company on two notes [106] aggregating approximately \$100,000.00. A. Yes.

Q. And you had various conferences with the Investment & Securities Company concerning the indebtedness? A. Yes.

Q. Mr. L. A. Stilson was the individual with whom you corresponded and conferred?

A. He and Mr. Kimmel.

Q. At that time, on July 27, 1937, you knew that the Investment & Securities Company, liquidating part of the former assets of the Old National Bank was desirous of getting as much as it could out of the various indebtednesses?

A. They told me so.

Q. Well, you knew that in turn the collateral or securities the Investment Securities would re-

(Deposition of Judson G. Rosebush.)

ceive from its various debtors, would, in turn, be assigned to the Reconstruction Finance Corporation.

A. I am not sure that I did.

Q. But you recall that on July 27, 1937, the Investment & Securities, through Mr. L. A. Stilson wanted to get as much security from you as possible for their indebtedness?

A. That's correct.

Q. At that time, did you own some Exchange National Bank stock? A. Yes.

Q. How many shares did you own?

A. 250.

Q. The Exchange National Bank stock was a stock of [107] a national corporation in Spokane by that name. A. That's right.

Q. And you had held that stock since that date?

A. Various dates in the twenties.

Q. Prior to July 27, 1937, had you paid assessments on that Exchange National Bank stock?

A. In full.

Q. How much was that.

A. Twenty-five-thousand dollars.

Q. The occasion for those assessments was the action taken by the receiver and his successors of the Exchange National Bank subsequent to its failure as a National banking institution in 1929?

A. Well, the occasion for it was the hundred percent liability which they demanded.

Q. Which was made upon you as a stockholder,

(Deposition of Judson G. Rosebush.)

subsequent to the Exchange National Bank's failure? A. Yes.

Q. On or about July 27, 1937, the Investment & Securities Company wanted you to assign your claim which you might have on account of the assessments which you had paid on the stock of the Exchange National Bank—the Investment & Securities wanted you to assign that to itself?

A. Shortly before that time they asked for an assignment of that claim?

Q. Where was the stock then?

A. The stock of the Bank?

Q. Yes. [108] A. In my possession.

Q. Where was the stock of the Exchange National Bank in your name at that time?

A. In my possession.

Q. Whereabouts? A. At Appleton.

Q. Wisconsin? A. That's right.

Q. Had you transferred that stock of the Exchange National Bank to your wife, Barbara J. McNaughton Rosebush, on October 7, 1935?

A. No.

Q. Has that stock of the Exchange National Bank in your own name, always remained in your own name? A. It has.

Q. And that Exchange National Bank stock has never been transferred or assigned to any person at any time save and except as indicated in the agreement of July 27, 1937, between yourself and the Investment Securities?

A. It wasn't assigned then.

(Deposition of Judson G. Rosebush.)

Q. But outside of that agreement of July 27, 1937, you did not assign or transfer that stock to anyone else at any time?

A. The stock has always been in my possession, has always belonged to me, and is now my stock.

Q. Did you ever transfer a certificate of assessment which you might have received, because of your ownership of that stock? A. Yes. [109]

Q. To whom did you transfer the certificate of assessment?

A. To Barbara J. McNaughton Rosebush.

Q. What was the date of that transfer?

A. October 7, 1935.

Q. What were the mechanics of that transfer, may I ask?

A. It was just a book account and she has separate books and I have separate books, and her account was charged with the amount and mine was credited on those books.

Q. Did you ever notify the Exchange National Bank of the transfer of the certificate of assessment of the Exchange National Bank stock?

A. There was no certificate of assessment.

Q. Well, what did you transfer to your wife on October 7, 1935? A. A book account.

Q. And did you ever notify the Exchange National Bank of that transfer? A. No.

Q. How did you get the book account back in your own name? A. I never did.

Q. Did you ever tell the Investment & Securities of your transfer of that book account?

(Deposition of Judson G. Rosebush.)

A. No.

Q. From March 19, 1937, through July 27, 1937, you corresponded with Mr. Stilson of the Investment & Securities [110] Company.

A. Well, I haven't any of the correspondence here, Mr. Kelley.

Q. Do you have in your possession any of that correspondence? A. No.

Q. Where is that correspondence, may I ask?

A. United States Internal Revenue Department has it.

Q. Do you happen to have with you a list of the correspondence they have? A. No.

Q. Do you think you could get such a list for us?

A. Well, I can ask them, of course.

Q. I thought you might have some record yourself.

A. No, I gave them all the original correspondence.

Q. Mr. Rosebush, have you given to the government all of the original correspondence passing between the Investment & Securities and yourself from approximately March 29, 1937 to date, concerning this? A. So far as I know, yes.

Q. By the way, referring to this case here in the District Court of the United States for the Eastern District of Washington, you don't claim any of the fund paid into this Court yourself?

A. Well, what from—you mean assessment paid?

(Deposition of Judson G. Rosebush.)

Q. Yes. [111]

A. Do I claim them for myself?

Q. Mr. Lally: Do you mean personally from Robbins to him?

Witness: He means liquidating dividends.

Q. Mr. Robbins, Charles P. Robbins, Shareholders' Agent, has paid sums aggregating \$6500.00 into the Court Registry, or perhaps other sums, as shareholders' Agent of the Exchange National Bank, in this cause, which sums would ordinarily be payable to yourself. Do you claim any of those sums? A. I do not make any claim.

Q. At the time you executed the agreement of July 27, 1937, with the Investment & Securities Company, Mr. Rosebush, you were in Appleton, Wisconsin? A. Yes.

Q. And Mr. Stilson and the other officers of the Investment & Securities Company were in Spokane? A. I don't know.

Q. Well, put it this way. You executed this agreement first yourself, then sent it to them out in Spokane for execution.

A. I don't recall who executed first.

Mr. Lally: I think the instrument shows it. One was executed in Wisconsin and one in Spokane.

Q. I hand you this executed copy produced by Mr. Lally for the purpose of refreshing your recollection.

(Witness examines document).

A. We executed on July 27. [112]

(Deposition of Judson G. Rosebush.)

Q. 1937? A. That's right.

Q. Now, at the time you executed that what was the situation with regard to your income tax?

A. The assessment had been made effective as of February 1934, and notice of distraint was out against me.

Q. You informed the Investment & Securities that you owed the United States Government moneys for income tax? A. Yes.

Q. Who was the individual that you informed, Mr. Stilson?

A. I presume so. Of course my letters were directed to the Investment & Securities Company. I might have directed to him as Vice-President. I don't recall without referring to the correspondence.

Q. At the time that you executed the contract on July 27, 1937, you understood that the Investment & Securities Company did not recognize the Government's claim as a first lien?

A. No sir, I understood no such thing.

Q. What was your understanding?

A. That they were taking it subject to a lien.

Q. When you say that you mean they were taking the assignment of whatever claim you might have by virtue of paying your assessment on the Exchange National Bank—they were taking that subject to the Government lien?

A. That's right and it is so stated in the agreement.

(Deposition of Judson G. Rosebush.)

Q. Will you state whether or not Mr. Stilson told you that the Securities & Investment did not know which [113] had the prior claim, the Government or his organization?

A. I have no recollection of such a statement made by Mr. Stilson at that time. He did make such a statement I think, in 1940 or 1941, but at that time I have no recollection of his making any such statement. However the record would show.

Q. And your recollection might be faulty.

A. My recollection may be at fault.

Q. But you did understand at the time that the agreement of July 27, 1937 was executed that the Investment & Securities Company was claiming a first lien upon the amounts, if any, which would be returned by virtue of your payment of your assessment on Exchange National Bank stock.

A. No, I didn't understand that at all. They were taking that claim subject to whatever claims the Government might have and there the matter rested as far as I recall.

Q. Well, you do recall, do you not, that there was a question as to whether the Government had a first lien upon such moneys or whether or not a first lien could be so created by an assignment such as the one entered into with Investment & Securities Company on July 27, 1937.

A. That wasn't at issue at all between us.

Q. Was it discussed?

A. No. As I said before the claim was turned

(Deposition of Judson G. Rosebush.)

over to them subject to whatever rights the Government might have and the agreement so specifically states.

Q. You had made a full disclosure to the Investment & Securities of your income tax indebtedness to the [114] *the* United States?

A. Well to the extent that the assessment as made was \$24,000. Of course, there may have been accrued interest on that which I didn't know. But the assessment was made—they know that.

Q. By assessment you mean the Government's claim?

A. The Government's assessment of February, 1934.

Q. Did you in fact tell them there had been a notice of distraint?

A. Yes, I told them that, too.

Q. The reason you told them that was you wanted to make a full disclosure of your condition to your creditors.

A. In this particular case I didn't want to turn that book account over to them with a very serious cloud upon it without their knowing such a cloud existed. Whether that was a real cloud, or not, we were not deciding at that time.

Q. In other words you turned it over as a conditional matter which would have to be settled between the United States and Investment & Securities at some future date.

A. Or be compromised between the Investment

(Deposition of Judson G. Rosebush.)

& Securities Company and me, or by compromise between the Government and myself.

Q. Just explain that.

A. You can settle a claim by payment of account, or a compromise settlement. If you make a compromise settlement of course all claims would be liquidated.

Q. Are you still hopeful of doing that in your situation? [115]

A. You want me to be a prophet, Mr. Kelley?

Q. No, I asked you the question advisedly for the record——

Mr. Erickson: I object to that question.

A. I don't know.

Q. Well the Investment & Securities on the occasion you executed the contract of July 27, 1937, told you that they did not believe the order of distraint would be prior to the assignment?

A. I have no such recollection, Mr. Kelley, Now, the record—the letters might show they did, but I have no such recollection.

Q. You might be mistaken in that?

A. I might be mistaken.

Q. In any event there was no agreement between you and the Investment & Securities Company that this assignment to the Investment & Securities Company would be subsequent and junior to the Government's lien. You simply left it for the future to determine, isn't that correct?

A. No. The agreement specifically says I was

(Deposition of Judson G. Rosebush.)

turning it over subject to any liens or claims they had—the agreement.

Q. I understand, but I am asking these questions and would like to find out your intention.

Question read: ‘Q. In any event, there was no agreement between you and the Investment & Securities Company that this assignment to the Investment & Securities would be subsequent and junior to the Government’s lien?’. [116]

A. The full agreement is set forth in the document as drafted.

Q. Did you consult counsel about this agreement of July 27, 1937? A. No, I did not.

Q. At the time that you executed the agreement of July 27, 1937, Mr. Rosebush, you understood that the Investment & Securities Company at least was claiming a first lien—— A. No.

Mr. Erickson: I object to that. It’s been asked twice.

Q. Well, since that time on different occasions haven’t you so stated that that was your understanding?

A. No. I saw Mr. A. W. Witherspoon in August, 1941, and I told him at that time I considered the claim of the Government was senior to their claim.

Q. I understand—but you also knew the Investment & Securities Company claimed to have the first lien and when the document was executed the status of the claim was to be left to the future, isn’t that correct?

(Deposition of Judson G. Rosebush.)

A. No. Not until Mr. Stilson wrote me some months ago they claimed a first lien did I know that by direct statement from him. Now, that's my memory. I may be at fault.

Q. When was the first time you realized the Investment & Securities claimed a first lien?

A. When I got Mr. Stilson's letter——

(Witness gets letter from files.) January 13, [117] 1924—Stilson to Rosebush. In the opinion of our attorneys any lien that the Government may have had has become Junior to ours or become lost entirely under the Statute of Limitations'.

Q. How long have you been out here on your last visit? A. This time?

A. Yes.

A. Oh, I got here a week ago Wednesday night. A week ago last Wednesday night.

Q. And you discussed this matter with Mr. Stilson and Mr. Kimmel last week, August 6th to be exact? A. Yes.

Q. Up in room 221 Old National Bank Building. A. It was the second floor anyway.

Q. Have you read the answer of the defendant Frank J. Kuhl in this matter?

A. In this case?

Q. Yes. A. No sir.

Q. By the way, the indebtedness which you had reference to in the contract of July 27, 1937, was that money that had been loaned directly to you?

A. I think not. I think the bulk of that was a note to the Exchange National Bank that the

(Deposition of Judson G. Rosebush.)

Old National Bank bought—without notice on my part until after the purchase.

Q. The money had been loaned—the original money however had been loaned to you?

A. By the Exchange National Bank. [118]

Q. And it was your understanding the indebtedness was subsequently assigned to the Old National Bank.

A. Yes. That is true regarding the bulk of that note. Now, there might have been a small part of it wasn't. But regarding the bulk of the note that statement is correct.

Q. You wrote Mr. Robbins, shareholders agent of the Exchange National Bank asking him to hold all checks until the Investment & Securities and the United States Government could settle their claims.

A. Well, I don't know whether I initiated the correspondence or whether he or Mr. Kimmel initiated it. At any rate there was an agreement finally reached.

Mr. Kelley: That is all.

Mr. Erickson: Is there any objection, Mr. Kelley, to entering a stipulation as to the admissibility of the agreement of July 27, 1937, at this time—stipulate to receive it in evidence—is there any objection?

Mr. Lally: If you gentlemen agree I will agree. You understand I am interpleader and supposed to be——

(Deposition of Judson G. Rosebush.)

Mr. Kelley: I don't have the original here.

Mr. Erickson: We can stipulate that the original will be introduced when it is produced.

Witness: I said that copy was identical with the original, so if you turn that in why doesn't it serve your purpose? [119]

Mr. Kelley: It's all right with me, if it's agreeable with the witness. You can have this. This is the same one you compared.

Witness: I went through it close enough to know it is the same.

Mr. Erickson: Then we can stipulate that copy.

Mr. Lally: That's agreeable. That is a correct copy of the original and may be introduced in lieu of the original.

Mr. Erickson: Yes, that is the one that Mr. Rosebush just compared.

(Whereupon: The agreement of July 27, 1937, entered into by and between Investment & Securities Company, a Washington Corporation, of Spokane, Washington, and Judson G. Rosebush, of Appleton, Wisconsin, marked Exhibit "A" to deposition of Judson G. Rosebush).

Cross Examination

By Mr. Erickson:

Q. Now, your indebtedness to the United States is \$26,000 as a result of income taxes in 1934.

A. Various figures—one figure is \$24,000 and one figure is \$26,000, the judgment, however, is for \$37,000 finally entered.

(Deposition of Judson G. Rosebush.)

Q. That included interest, penalties and so forth?

A. Yes, I assume it did. It's the amount entered in the judgment. [120]

Q. And the notice of assessment and distraint was given to you April 17th, 1934, or thereabouts.

A. In February and April of 1934.

Q. That was income tax for what year?

A. 1928.

Q. And that amount is substantially still due and unpaid? A. Correct.

Q. You then were a stockholder in the Exchange National Bank and owned 250 shares of stock in that bank.

A. I held 250 shares of stock in the Exchange National Bank.

Q. And you became indebted to the Investment & Securities Company through some dealings which the Old National Bank had with the Exchange National?

A. Largely, but not entirely.

Q. You had some independent business——

A. With the Old National—that's my recollection. The bulk of that debt arose out of the purchase of the Exchange National by the Old National, but it's my recollection a minor part of it was owing to the Old National.

Q. When the Old National failed the Investment and Securities took over the liquidation of the Old National Bank. A. So they told me.

Q. Do you know what your indebtedness was

(Deposition of Judson G. Rosebush.)

to the Investment & Securities as of July 27, 1937?

A. Well, it was more than \$70,000. [121]

Q. Well, that's close enough. Prior to the execution of this agreement of July 27, 1937, you had considerable correspondence with Mr. L. A. Stilson and Mr. Kimmel of the Investment & Securities Company.

A. I had some. I wouldn't say it was considerable.

Q. And in that correspondence you told the Investment & Securities Company, Mr. Stilson and Mr. Kimmel, of your obligations to the United States Government, did you not? A. Yes.

Q. I will hand you Government's Exhibit 'B' for identification and ask you what that is. If you recall that exhibit.

A. This was a letter from me to Mr. Stilson, dated April 6, 1937—I recognize the letter.

Q. And in that letter you stated to Mr. Stilson that you are not a free agent to assign your equity in the Exchange National Bank stock. In other words, you say you presume the 'notice of distraint will cover this as well as other assets, and on the other hand I am hoping presently to get that out of the way and until I do I wonder if it would not be pre-mature to make any other agreement regarding that item'. You wrote that.

A. Yes, I did.

Q. And in answer to that did you receive a letter from the Investment & Securities Company?

(Counsel hands witness document.)

(Deposition of Judson G. Rosebush.)

A. Yes, I remember that letter. [122]

Q. A letter dated April 14, 1937, signed by L. A. Stilson in which thy state to you as follows:

‘We have submitted to our attorneys the question of assignment by you of your claim against the Exchange National Bank on account of the super-added liability paid on the stock, and they have advised us that an assignment on your part could be executed without any question, that *that* it might develop the lien of the United States Government would be prior to the lien created by this assignment, a matter which would have to be determined at a later date when, as and if the funds are payable on the claim against the bank. We are willing to go ahead with the program outlined in our letter of March 29th with the full understanding that the assignment of the Exchange National Bank might be subject to a prior claim to the United States’.

Mr. Stilson wrote you that, did he not?

A. That’s right.

Q. In reply to that—referring to this letter of June 11th, 1937, do you recall that? A. Yes.

Q. In which you state as follows: ‘In reply to yours of June 2nd the agreement inclosed seems to be satisfactory except that on page 3 you have not made note of the fact that the U. S. Internal Revenue Department has a *lien* prior to yours. That has been covered by our correspondence, but it seems to me it ought to be included in the agreement.’ You wrote that, did you not?

(Deposition of Judson G. Rosebush.)

A. Yes sir.

Q. Then in reply to your letter the Investment [123] and Securities Company wrote you on June 16, 1937, did they not? A. Yes.

Q. In that letter Mr. Stilson wrote you as follows:

‘I have your letter of June 11th, 1937, in which you state that the agreement which we submitted to you is satisfactory with the exception that you feel that a statement should be inserted that the United States Internal Revenue Department has a prior lien on your claim against the Exchange National Bank. I have discussed this with our attorneys and they feel such a citation in the agreement would be out of order as it has not yet been definitely determined whether or not their lien would be prior to a proper assignment. This would be a matter that would have to be determined when, as and if a disbursement would be made on the Exchange National claim. Due to the fact we have notice of the lien of the Government and the nature of the lien our attorneys feel that the agreement should be satisfactory without such a statement as there could not possibly be any contention on our part that you had or were misrepresenting the status of the claim’. Then on June 21st, 1937, you wrote to Mr. Stilson, did you not? A. Yes sir.

Q. In that letter you told Mr. Stilson:

‘Yours of the 16th is at hand. In reference to your second paragraph I think the agreement as

(Deposition of Judson G. Rosebush.)

drafted involves me in no possible misunderstanding so far as your company is concerned since from the start of these negotiations [124] you have had notice of the tax lien. My fear in this matter arises from the fact that the notice of distraint set forth that I was not to transfer any more of my property until that tax was paid, so that if I make the agreement with you as you have drafted it I am, on the face of it, disregarding the notice of the Federal Internal Revenue Unit. It seems to me, therefore, for my own protection as regards the Internal Revenue Unit you should either redraft the agreement so the United States could not hereafter claim I had violated their order, or if you do not want to do that I should then present your proposed agreement to the Internal Revenue Unit and see if they were willing to let it stand as now drafted—' You wrote that to Mr. Stilson on June 21st, did you not? A. Yes sir.

Q. Mr. Kelley: Are you going to read the last paragraph?

Mr. Erickson: (Reading) 'As you can clearly see from the above I have a tremendous respect for the power of the United States Government and do not wilfully want to run afoul of that power'.

Then on June 30th, 1937, Mr. Kimmel, The Secretary wrote you, did he not? A. Yes sir.

Q. And in that letter Mr. Kimmel said:

'Our attorneys have rewritten the agreement to

(Deposition of Judson G. Rosebush.)

show that the Collector of Internal Revenue has filed an order of distraint and therefore the assignment to this Company is subject and junior to the claim the Collector of [125] Internal Revenue may have acquired by reason of said order'. Then on July 21st, 1937, Mr. Stilson wrote you this letter, did he not?

(Handing witness letter.)

A. Yes sir.

Q. The substance of this letter is what, Mr. Rosebush, without reading it in full?

A. That they wanted a separate assignment covering the claim against the Exchange National Bank in which no mention would be made of the claim of the Bureau of Internal Revenue, and, also they wanted my Exchange National Bank stock certificates to be endorsed and forwarded to them.

Q. I will ask you whether or not you replied to that letter.

A. Yes, under date of July 27th.

Q. Let me see it a minute, please. (Counsel reads letter) And in that letter beginning at the second paragraph you state 'Regarding the matter of the separate assignment in which no mention is made of the claim of the Bureau of Internal Revenue, and the request of your attorneys that the Exchange National Bank stock certificates be sent to you, I am sorry to say that both of these requests in my opinion are absolutely contrary to

(Deposition of Judson G. Rosebush.)

the notice of distraint which the Internal Revenue Department filed against me for the assignment stand *as* an independent document, and makes no specific reference to the agreement in which the claim of the Internal Revenue Department is given priority, and moreover the notice of distraint prohibits me from turning [126] over any of my stock certificates to any one until their claim is liquidated. Now I may be in error in both of those matters, and accordingly am entirely willing to send the document inclosed in yours of July 21st to the Collector of Internal Revenue at Milwaukee to see if I can sign the assignment, and if he says I can do so I will do so. Accordingly I await your advice in these two matters. Will you kindly cancel my original and return the agreement of which the inclosed is a substitute?'

Mr. Kelley: Do you propose to offer all those photostatic copies in toto?

Mr. Erickson: Yes.

Mr. Kelley: I have no objection if it may be stipulated I can reserve all objections to the competency, relevancy and materiality of them to the time of trial.

Mr. Erickson: That's agreeable. I think you would have that right anyway.

Mr. Kelly: What I wish to do is compare the various photostatic copies. I have no doubt they are correct, Mr. Erickson.

Q. (By Mr. Erickson) Now you speak in this letter of July 27th of cancelling your original and

(Deposition of Judson G. Rosebush.)

‘returning the agreement of which the inclosed is a substitute’—what did you mean by that?

A. Frankly, I can’t tell without running it down. The only explanation I’ve got is this one—this was July 27th, which was the day I executed that final agreement and [127] that I must have sent—that’s what I did—on that date—I sent that agreement in, then I was asking him to cancel my original—I don’t recall what that was about—it’s clear that on July 27th I signed that agreement and sent that in, and then sent this in as a substitute—what the original was I can’t recall.

Q. Did you ever correspond with the Collector of Internal Revenue in Milwaukee to see what his attitude was?

A. No.

Q. Why didn’t you do that?

A. Because I had adequately protected the Government in my opinion.

Q. How do you believe you protected the Government?

A. By setting forth in the agreement that the priority of claims, as the agreement states——

Q. After the execution of this agreement on July 27, 1937, did you have any further contact with the Investment & Securities Company?

A. Well I saw them from time to time and wrote to them from time to time, yes.

Q. And when did you state you were aware for the first time they claimed a lien prior to the United States——

(Deposition of Judson G. Rosebush.)

Mr. Lally: It's in the record. I will give you the date——

Witness: I got a letter from Stilson January 13, 1942. It's in the record already.

Mr. Erickson: I think that's all the [128] questions I have at this time, except putting these letters in evidence.

Mr. Lally: I have a few questions but the main issue is between you and Mr. Kelley and you had better finish, then I will ask a couple of questions to clear up the record.

Redirect Examination

By Mr. Kelley:

Q. Do you have in your possession with you the letter from Mr. L. A. Stilson, Vice-President of the Investment & Securities Company, to yourself under date of March 29th, 1937?

Mr. Erickson: There is a photostatic copy. I am offering all the photostatic copies of all the letters subject to Mr. Kelley's right to inspect them.

A. No, I have not.

Q. Directing your attention to a photostatic copy of a letter from Mr. Stilson to yourself, under date of March 29th, 1937, do you recall receiving the original?

A. Yes sir.

Q. A short time before March 29th, 1937, you had been on a visit to Spokane, had you?

A. Yes.

Q. And at that time you discussed with Mr. Stilson matters concerning the possibility of your

(Deposition of Judson G. Rosebush.)

recovering upon the payment made by you of the super-added liability on the stock of the Exchange National Bank? A. Yes. [129]

Q. And at that time you understood there had been some indication that those who had paid their assessment would receive a partial return of the assessment so paid. A. Yes.

Q. And Stilson on behalf of the Investment & Securities Company at that time wanted you to assign to the company as security for the balance of your indebtedness to the Investment & Securities any recovery that might be made on the assessment repaid on your stock of the Exchange National Bank, is that correct?

A. I think that's correct.

Q. Directing your attention to the letter of March 29th, 1937,—take the time if you so desire to read it—that reflects in a general way the relationship between yourself and the Investment & Securities at that time, namely the creditor and debtor situation. A. Yes.

Q. Have you turned the original of that letter of March 29th, 1937, over the United States Government?

A. I can't recall, did I?

Mr. Erickson: I think you did because we photostated it back in Washington.

Mr. Kelley: I might say this it would help us in our preparing and serving notice, and so forth.

Witness: I recognize this letter. That is a correct photostat.

(Deposition of Judson G. Rosebush.)

Q. Do you have with you a letter of April 28th, 1937, addressed to you? [130] A. No.

Q. From L. A. Stilson, Vice-President.

A. No.

Q. Do you have that in your possession in Appleton, Wisconsin?

(Counsel hands to witness a purported carbon copy.)

Mr. Kelley: Have you got that, Harvey?

Mr. Erickson: No, we haven't got that.

Witness: Well, in a general way I recall that letter, but I don't recall whether I turned that over to the Government, or not.

Q. But you do recall that on or about April 28, 1937, that the Investment & Securities Company through L. A. Stilson insisted that the Government's lien against you for the 1928 income tax payments did not actually exist as a first lien on that date, do you not?

A. No. I have said repeatedly I had no such understanding at that time, Mr. Kelly. I said that repeatedly.

Q. I don't want you to be confused now by my question. On or about that time, April 28th, 1937, Mr. Rosebush, did you not understand the position of the Investment & Securities Company to be that the lien of the United States Government for income tax did not actually exist—didn't you understand that was at least their claim?

A. No. That point was not raised at all be-

(Deposition of Judson G. Rosebush.)

tween us to the best of my recollection. They simply took the stuff as is.

Q. Directing your attention to a letter in long-hand written from the Hotel Pfister, in Milwaukee, May 8, 1937, [131] to Mr. L. A. Stilson, Vice-President Investment & Securities Company, I will ask you if that is your handwriting. A. Yes.

Q. Now, directing your attention to plaintiff's exhibit C, being a letter in longhand from yourself to the Investment & Securities, May 8, 1937, does that refresh your recollection as to whether or not, the Investment & Securities on or about April 28, 1937, had insisted that the lien of the Government did not actually exist.

A. No. That point was not at issue at all between us.

Q. I am not asking you that. I am asking whether or not they didn't contend the Government had no lien. A. No sir, not with me.

Q. Then what was the reason for your writing—referring to this exhibit—" * * * but again calling your attention to the fact that it is my belief that the claim of the U. S. Internal Unit on my National Bank stock actually exists, rather than being in the 'might' class as you suggest". What was the reason for writing that language then?

A. Well I can't recall why I phrased it that way.

Q. You did not make a copy of that letter, plaintiff's identification C?

A. If I have, I can't locate it.

(Deposition of Judson G. Rosebush.)

Q. In any event you did not give it to the Government?

A. So far as I know—not. [132]

Mr. Erickson: We have no copy of it. That's in your handwriting?

A. Yes, that is my letter.

Q. (By Mr. Kelley) Did you give the original letter of April 28, 1937, from Mr. L. A. Stilson to yourself, to the Government?

A. I don't recall, Mr. Kelley.

Q. Do you have that with you?

Mr. Erickson: We do not have it. This is the list we got from them. (Handing document to Mr. Kelley). So far as I know that represents it all.

Mr. Kelley: Do you have any objection to having this marked?

Mr. Erickson: No, I don't think so—but I think I should keep it in the file.

(Whereupon it is stipulated document may be marked 'Plaintiff's identification D' and attached to the deposition and a copy of same given to Mr. Erickson.)

Q. Directing your attention to plaintiff's exhibit D for identification, purporting to be a list of all the correspondence you turned over to the Government—is that list there a complete list of the correspondence you turned over—do you have a list of the correspondence you might mail to us?

A. I didn't make a list.

Mr. Kelley: I think that is all.

Mr. Erickson: That's all I have.

(Deposition of Judson G. Rosebush.)

Mr. Lally: I wish to ask a few questions [133] on behalf of Mr. Robbins, interpleader and also called Cross-Defendant.

Examination

By Mr. Lally:

Q. Mr. Rosebush, adverting to the bookkeeping account transfer that took place on the books of account of yourself and those of Mrs. Rosebush, transferring something pertaining to the Exchange National Bank, will you state as nearly as you can the wording of that entry?

A. Well, on my books she was credited with the amount I paid on the assessment and my bank stocks were charged. That would be the journal entry, and that's all there was.

Q. And the converse of that was put on her books?

A. Correct.

Q. Was there any definite sum put down?

A. Oh, yes, the amount I had actually put into the assessment.

Q. \$25,000?

A. That's right. There was some odd amount because of some adjustment in interest I had paid your predecessor.

Q. Now I understand you didn't attempt in that entry to transfer stock certificates themselves.

A. No.

Q. You still retained them and considered them yours?

A. That's right.

Q. And still do? [134]

A. That's right.

Q. As I understand your position in this suit,

(Deposition of Judson G. Rosebush.)

in the United States District Court, here in Spokane, you make no claim yourself, or Mrs. Rosebush, to this money now deposited in Court—that's a matter to be settled by the Court to be given either to the Investment Company or to the Government.

A. I make no claim to that money.

Q. Does Mrs. Rosebush make any claim?

A. Not as against the Investment & Securities Company, and she has made no claim against the Government.

Q. And she never made any claim against Mr. Robbins, shareholders agent? A. No.

Q. Or you have never made any claim on him?

A. I didn't need to make any claim on him, you see.

Q. I assume you knew that Mr. Robbins was depositing this money in Court.

A. That's right.

Q. To let the Court determine which of these two, the Investment & Securities Company or the Government would get it. A. That's right.

Q. You or Mrs. Rosebush have made no objection to that procedure?

A. We haven't made any objection.

Q. You say Mrs. Rosebush makes no claim against the Investment Company or the Government.

A. What Mrs. Rosebush will do as against the Govern- [135] ment is not determined. She makes no claim against the Investment & Securities Company.

(Deposition of Judson G. Rosebush.)

Q. Does she make any claim that Mr. Robbins pay this money to her?

A. Not at the present time no.

Q. She never has in the past?

A. She never has in the past.

Q. So far as you know she isn't going to claim in the future that Mr. Robbins pay it to her?

A. That I don't know. Our position is that we make no claim as against the Investment & Securities Company.

Q. But you and Mrs. Rosebush do make a possible claim against the Government?

A. We have asserted no claim as against the Government.

Q. Have either of you asserted any claim on this money on Mr. Robbins, on behalf of the Government?

A. No.

Q. You of course, testified you never notified Mr. Robbins you had transferred anything regarding this stock assessment liability or money received to Mrs. Rosebush.

A. That's right.

Q. And Mrs. Rosebush, of course, has never done so.

A. No.

Q. Did you ever know of Mrs. Rosebush asserting any right to have this disbursement paid to her? [136]

A. She has never made any such assertion.

Q. Do you know if she knows of this suit out here in this Court?

A. In a general way.

Q. You have told her?

A. Yes.

Q. You told her we deposited the money here?

(Deposition of Judson G. Rosebush.)

A. Yes, she knows about that.

Q. This is possibly conjecture—do you know whether or not she would be willing to file a disclaimer?

A. She would refer that matter to her attorney.

Q. I understood you to answer Mr. Kelley, Mr. Rosebush, that you had written Mr. Robbins, or orally agreed with him that he should withhold payment of any of these disbursements or dividends on account of stock assessment liabilities until the Court made a decision in this suit pending here.

A. That is correct.

Q. In order that then it would be disbursed in accordance with the Court's decree.

A. Well it will have to be eventually, won't it?

Q. Was that by letter or conversation?

A. By letter.

Mr. Lally: I think that is all.

Mr. Erickson: That is all for us.

Mr. Kelley: Just a question or two. [137]

Re-Direct Examination

By Mr. Kelley:

Q. Did you ever tell the Investment & Securities Company that satisfactory arrangements would be made by you to pay the tax of the United States Government?

A. I told them I was hoping to make a contemplated settlement with the Internal Revenue Department.

Q. When did you tell them that?

A. I think that was along in 1937—1936.

(Deposition of Judson G. Rosebush.)

Q. To whom did you tell that?

A. The whole thing is very hazy—that's just a hazy recollection in my mind.

Mr. Erickson: I want it understood I object to this testimony as to the contemplated settlement on the ground it's immaterial and incompetent to the issues.

Q. Do you recall where such a discussion might have taken place?

A. On April 6, 1937, I wrote Stilson 'I am hoping presently to get that (meaning by that the Internal Revenue question) out of the way, and until I do I wonder if it would not be premature to make an agreement regarding it'.

Q. Now did you as a taxpayer ever give the United States Government a waiver in connection with an offer to compromise this claim of theirs you have testified to for income for the year 1928?

A. Not that I can recall.

Q. You never gave them a waiver.

A. Not so far as I can recall.

Witness excused. [138]

State of Washington

County of Spokane—ss.

I, J. J. Cole, Do Hereby Certify: That I am the Court Reporter who reported in shorthand the matters and proceedings occurring at the time of the hearing in the above entitled cause; that the above

and foregoing is a full and accurate transcription of the same.

J. J. COLE,
Court Reporter

[Endorsed]: Filed Aug. 4, 1943. [139]

PLAINTIFF'S EXHIBIT No. A

April 28, 1937

Mr. Judson G. Rosebush
Appleton, Wisconsin

Dear Mr. Rosebush:

We have your letter of April 20th, in which you submitted an offer of \$820.00 in cash for the 820 shares of stock of the Inland Empire Paper Company, which were taken over from you a year ago. In your letter you have not replied to the requests in my former letter, asking for a pledge of your claim against the Exchange National Bank in return for certain concessions on our part.

I have submitted your offer to purchase the Inland Empire Paper Company stock to our Trustees, but it is their position that we will not accept the offer at this time, due to the large amount of your indebtedness which is unpaid and is not secured, and also to the fact that you have not been willing to give us any commitment concerning the claim against the Exchange National Bank. At the present time it appears that unless your affairs improve very materially, there is a large possibility of loss to us on your indebtedness, and as long as the

stock in the Paper Company has speculative possibilities, it would not be fitting for us to sell it for a nominal consideration to you, with no provision being made as to the securing or payment of the balance of the debt. The prospects of the stock in the Inland Empire Paper Company have greatly improved during the past year, due to the very material betterment in the paper industry, and a continuous improvement might create a value and a possibility of recovery on our part in the future, so that a sale at this time under the circumstances would not be justified.

As I stated in my former letter, we are willing to enter into an agreement with you concerning the stock in the Paper Company, and the Nekoosa-Edwards and Northern Paper Mills stocks, providing you will pledge to us your claim against the Exchange National Bank, but this offer will terminate unless it is accepted by you not later than May 10th, 1937, and you are hereby notified that unless we receive an acceptance by you by that date, we will consider the offer refused, and will immediately proceed to institute legal action to clarify the present situation, and to reduce the balance of your indebtedness to us to a judgment. Continuous correspondence between us is no longer necessary, as we have made you a definite proposition and until you have either accepted or rejected it, we do not care to enter into other negotiations,

JGR #2

4-26-37

Unless, therefore, we receive from you not later than May 10th, 1937, an acceptance of our proposal

as set forth in previous correspondence, you may expect us to resort to legal action.

Very truly yours,

L A S

L. A. Stilson, Vice President

LAS:G [140]

PLAINTIFF'S EXHIBIT No. B

Copy - letter

Shareholders' Agent to Rosebush

June 10, 1940.

Mr. Judson G. Rosebush,
Appleton, Wisconsin,

Dear Mr. Rosebush:

We are contemplating paying a dividend upon the claims of persons who have paid their assessments upon their bank stock in full.

We have a letter from the Investment & Securities Company, of this city, to the effect that you have given *tham* company an assignment of your rights in this matter and requesting us to give them notice of such dividend payment, whereupon they will file a copy thereof with us.

Will you please verify this arrangement with that company by return mail.

Yours very truly,

Shareholders' Agent. [141]

PLAINTIFF'S EXHIBIT No. "C"

HOTEL PFISTER

Ray Smith, Proprietor,
Harry Halfacre, Manager,
Milwaukee

May 8, 1937

Mr. L. A. Stilson Vice President
Investment & Securities Co.
Spokane Wash

Dear Mr. Stilson:—

Yours of April 28th duly came to hand. I have decided to accept the offer outlined in yours of March 29 and April 14: but again call your attention to the fact that it is my belief that the claim of the U. S. Internal Unit on my Exchange National Bank stock actually exists, rather than being in the "Might" class as you suggest.

Please prepare papers accordingly

Respectfully

JUDSON G. ROSEBUSH [142]

NOTICE OF TAX LIEN

UNITED STATES

vs.

JUDSON G. ROSEBUSH.

Form 668—Revised Oct., 1928

Treasury Department

Internal Revenue Service

Notice of Tax Lien Under Internal Revenue Laws

No. 7501

United States Internal Revenue,
District of Wisconsin

Milwaukee, Wis., December 4, 1934

Pursuant to the provisions of Section 3186 of the Revised Statutes of the United States, as amended by Section 613 of the Revenue Act of 1928 (Act of May 29, 1928, 45 Stat., 875), notice is hereby given that there have been assessed under the Internal Revenue laws of the United States against the following-named taxpayer, taxes (including penalties) which after demand for payment thereof remain unpaid, and that by virtue of the above-mentioned statute the amount of said taxes, together with interest, penalties, and costs that may accrue in addition thereto, is a lien in favor of the United States upon all property and rights to property belonging to said taxpayer, to wit:

Name of taxpayer—Judson G. Rosebush.

Residence or place of business—117 N. Park Ave., Appleton, Wisconsin.

Nature of tax—Income Tax.

Taxable period—1928.

Amount of tax assessed—\$26,161.06.

Additional (penalty) tax assessed—Int. non-payment \$382.02; together with add'l int. @ rate of 1% per month from 4/10/34 to date of payment.

Date assessment list received—1934 Feb 15P #2.

O. A. LaBUDDE,
Collector.

Filed this 17th day of December, 1934, at 2:10 P. M. Florence E. Rogers, Clerk (or Registrar).
[143]

Certificate of Officer Authorized by Law to Take Acknowledgments.

State of Wisconsin,
County of Milwaukee—ss.

On this day personally appeared before me a Notary Public in and for the State and County aforesaid, O. A. La Budde, Collector of Internal Revenue for the district of Wisconsin, to me well known as the person who executed the foregoing instrument, and acknowledged that he executed the same for the purposes therein expressed.

In witness whereof I have hereunto set my hand and official seal, this the 4th day of December, 1934.

[Seal] C. J. LANDUSKY,
Notary Public.

My commission expires Oct. 11, 1936.

To Register of Deeds Iron County
Crystal Falls, Michigan [144]

CERTIFIED COPY OF RECORD OF NOTICE
OF TAX LIEN

State of Michigan,
County of Iron—ss.

Register's Office for the County of Iron.

I, Della Shoquist, Register of Deeds for said County, do hereby certify that I have compared the foregoing copy of Notice of Tax Lien—United States vs. Judson G. Rosebush with the Original Record thereof, now remaining in this office, and that the same is a correct Transcript therefrom, and of the whole of such Original Record.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Register of Deeds, at Crystal Falls, in said County, this 25th day of January A. D. 1943.

[Seal] DELLA SHOQUIST,
Register of Deeds. [145]

DEFENDANT'S EXHIBIT "2"

Investment and Securities Co.

Old National Bank Building

Spokane, Washington

March 29th, 1937

Mr. Judson G. Rosebush,
Appleton, Wisconsin

Dear Mr. Rosebush:

I have your letter of March 23rd, 1937, in connection with the Inland Empire Paper Company common stock. Since your recent visit to Spokane and since the receipt of your letter I have had the opportunity of discussing with our Trustees the matters which we discussed at the time you were here. A review of the circumstances would, I believe, be in order.

You will recall that under the reorganization plan of the Inland Empire Paper Company, the holders of the common stock were to turn in to the Old National Bank and Union Trust Company the certificates they then held in lieu of which there would be issued to them under the reorganization plan new certificates of common stock when the reorganization plan became effective.

In accordance with your instructions, 820 shares of the common stock of the Inland Empire Paper Company which we held as collateral to your account, and to which were attached stock powers signed by you, were turned in to the Old National Bank and Union Trust Company, but the new stock to be issued in lieu thereof was not issued at that

time. Under date of April 7th, 1936, we gave you notice by registered mail that unless your indebtedness was paid on or before April 22nd, 1936, we would sell at private sale at our office the security held to your indebtedness, including the stock of the Inland Empire Paper Company. The indebtedness was not paid and on the date set for the sale, a sale was held and the security held as collateral by us to your account was bid in by this Company, no other bidders appearing. The 820 shares of stock of the Inland Empire Paper Company were bid in for the sum of \$1.00, as at that time the affairs of that Company were so badly involved that we felt that only a nominal bid would be justified. [146]

Subsequent to April 22nd, 1936 the new stock of the Inland Empire Paper Company was issued by the Old National Bank and Union Trust Company as Trustees and we were notified that it would be delivered to us upon surrender of the receipt given when the old stock was deposited. However, we found that the stock was issued in your name as you were the recorded owner of the stock at the time of deposit and in fact were still the owner on November 25th, 1935, the date under which the new stock was issued, although it was not available for delivery until some months subsequent to that time.

We then asked you to sign stock powers to enable us to transfer to our name the new stock in the Inland Empire Paper Company. This was especially necessary as under the agreement with shareholders in which you concurred, 51% of the holdings

of each share holder was to be turned over to the Reconstruction Finance Corporation to give them voting control as long as their loan from the Reconstruction Finance Corporation was unpaid.

In reply to our request for stock powers to make the transfer, you wrote that you would not care to execute such powers, as to do so would be a ratification on your part of the validity of the sale of the 820 shares for the sum of \$1.00 which you felt was much below a fair and reasonable value of the stock at date of sale.

As I told you in our conference here, it was not our desire in taking over the title to the securities held as collateral to your account to work any undue hardship upon you by purchasing the stock at a sacrifice price. The fact that there was no known market for Inland Empire Paper Company common stock and that the company was very badly involved was the reason for our setting such a nominal price upon it in our bid. The other two stocks had a market value which could be ascertained within a reasonable degree of certainty and I believe our bids were a reasonable market price at the time of the sale.

During your visit we also discussed matters concerning your possibility of recovering upon the payment made by you on the superadded liability on stock of the Exchange National Bank. There is some indication that those who paid their assessment in full will receive a partial return on the assessment paid. If you are willing to agree to ratify the sale of your securities made on April

22nd, 1936, and are also [147] willing to assign to us as security to the balance of your indebtedness any recovery which may be made on the assessment paid on the Exchange National Bank stock, we are willing to agree with you that we will not sell the Inland Empire Paper Company common stock before April 1st, 1938, unless authorized so to do by you, and that if a sale is made subsequent to April 1st, 1938, and prior to April 1st, 1939, we will agree to give you the first opportunity to purchase the stock at the price at which we contemplate selling it and that you will have a five day period in which to elect to purchase or not to purchase before we will sell the stock to anyone else; and further, that in the event of sale before April 1st, 1939, we will credit to you on the amount you still owe us the excess of the sale price over the \$1.00 price at which we bid the stock in.

We will also agree that if we sell either the Nekoosa Edwards Paper Company stock or the Northern Paper Mills stock before April 1st, 1938, we will credit you with any amount we receive for such stock in excess of the amount at which we bid it in at the sale.

Our attorneys have advised us that in their opinion we should have a ratification of the whole of the sale, that is, not only our purchase of the Inland Empire Paper Company common stock, but also our purchase of the Nekoosa Edwards Paper Company stock and that of the Northern Paper Mills, as any question of the validity of part of

the sale might be considered as involving the validity of all of the sale. It is, of course, our position throughout this entire matter that the sale as held was valid in every way and that title to the securities rests in us, but that if you will not sign stock powers so that the stock can be transferred, it will be necessary for us to bring a suit upon your note and it is the expense and delay involved in such an action that we are endeavoring to avoid and is our reason for considering an agreement such as that outlined above.

The entire agreement is, of course, subject to the approval of the Reconstruction Finance Corporation, to whom your notes and the stocks are pledged, and I am taking the matter up with you before submitting it to them for approval, as it would be much better that we have a complete understanding before submitting it to the Reconstruction Finance Corporation, in order that their authorization to us may be absolutely definite.

In your letter of March 23rd you asked us to give you a price good for twenty days on the Inland Empire Paper Company common stock. Due to the fact that there is no regular market for this stock upon which to [148] base such a price and also because the stock is pledged to the Reconstruction Finance Corporation, it is impossible for us to give you a firm price at this time. However, if you wish to make us an offer, we will be glad to submit it to the Reconstruction Finance Corporation.

If the program as outlined above is acceptable to you, kindly so advise us that we will have the proper agreements drawn and forwarded to you for execution.

Very truly yours,

L. A. STILSON,

L. A. Stilson, Vice-President.

LAS:W [149]

DEFENDANT'S EXHIBIT "3"

April 6, 1937

Mr. L. A. Stilson, Vice President,
Investment & Securities Company,
Old National Bank Building,
Spokane, Washington.

Gentlemen:

In reference to yours of March 29, the Notice of Destraint of the United States Internal Revenue office against me still holds, so that at the moment I judge I am not a free agent to assign you my equity in the Exchange National Bank stock. In other words, I presume the Notice of Destraint will cover this as well as other assets. On the other hand, I am hoping presently to get that out of the way, but until I do, I wonder if it would not be premature to make any agreement regarding that item.

On further reflection, it seems to me perhaps the best way out of that Inland Empire Paper Company situation would be for some of us here to

get complete release of that stock from you upon payment of a certain consideration.

When I was in conference with you and Mr. Kimmel, he suggested the price of \$1.00 per share of that stock which you seemed to think was satisfactory.

On further reflection, if you are still of the same opinion, I will be glad to see if I cannot raise the money in some indirect fashion so as to get to you \$820.00 for the 820 shares in question, the understanding of course being that of that amount \$819.00 will be applied on the principal of my note.

Respectfully yours,

JGR/H [150]

DEFENDANT'S EXHIBIT 4

Investment and Securities Co.

Old National Bank Building

Spokane, Washington

April 14th, 1937

Mr. Judson G. Rosebush,

Appleton, Wisconsin

Dear Mr. Rosebush:

I have your recent letter stating that in your opinion the Federal tax lien which has been filed against you would prevent you making the assignment of your claim against the Exchange National Bank as requested in our letter of March 29th, and also requesting that we give you a firm price on the Inland Empire Paper Company stock which was taken over from you.

It is not our intention to set any price upon the Inland Empire Paper Company stock until such time as its exact status is determined, but if you desire to make a firm offer we will submit it to our Trustees and to the Reconstruction Finance Corporation for their consideration.

We have submitted to our attorneys the question of an assignment by you of your claim against the Exchange National Bank on account of the super-added liability paid on the stock and they have advised us that an assignment upon your part could be executed without any question but that it might develop that the lien of the United States Government would be prior to the lien created by the assignment, a matter which would have to be determined at a later date when, as, and if, the funds are payable on the claim against the bank. We are willing to go ahead with the program outlined in our letter of March 29th with the full understanding that the assignment of the Exchange National claim might be subject to a prior claim to the United States.

Our Trustees have had a full discussion of the entire situation concerning your indebtedness and it is our intention to immediately clarify the situation either by obtaining from you a ratification of the sale held April 22, 1936 and a transfer of the Inland Empire Paper Company stock to our name by execution on your part of stock powers, or to submit the [151] entire matter to the courts for determination. In such event, of course, we will not only ask to have the sale properly confirmed, but

will also place the balance of the debt in the form of a judgment.

We have endeavored in every way to give you every possible chance to retrieve something out of your investments, but unless we can receive your cooperation it will be necessary for us to proceed by legal methods from now on.

Will you kindly advise me immediately whether or not we may expect from you a complete and absolute ratification of the sale of securities held April 22, 1936, together with an assignment of your claim against the Exchange National Bank, subject, of course, to any liens which may exist at this time to the United States Government, in consideration of which we would agree to hold the Inland Empire Paper Company stock for one year, unless sale prior to that time is consented to by you; and we would further agree that if the stock is sold any time prior to April 1st, 1939, to give you credit on your remaining indebtedness for any excess of the sale price over the price at which the stock was bid in by us; and would also agree that if the other securities taken over from you are sold before April 1st, 1938, we would credit you with any amount we receive for the stock in excess of the amount at which it was bid in at the sale.

The above would, of course, all be subject to the approval of the Reconstruction Finance Corporation.

If you are not willing to enter into such an agreement, kindly so advise us immediately and we will take such other course as apparently is indicated.

Very truly yours,

L. A. STILSON,

L. A. Stilson, Vice-President.

LAS:W [152]

DEFENDANT'S EXHIBIT 5

April 20, 1937

Mr. L. A. Stilson, Vice Pres.,
Investment & Securities Co.,
Old National Bank Building
Spokane, Washington.

Dear Mr. Stilson:

Replying to yours of April 14, I think we would made the most headway if, in harmony with your suggestion, we would make you a firm offer on the 820 shares of Inland Empire Paper Company stock you are holding. Accordingly, in line with our personal conversation I will raise \$820.00 in cash and offer that amount for the aforesaid 820 shares of Inland Empire Paper Company common stock, the understanding of course, being that \$819.00 of that amount shall be applied on my direct indebtedness since, as I understand it, when you bid the stock in you bid the total block in at \$1.00.

If we get this matter out of the way first, that will simplify our problem considerably, and I would

then be glad to discuss with you the balance of the matter referred to in your letter.

Respectfully yours,

JGR/H [153]

DEFENDANT'S EXHIBIT "6"

Investment and Securities Co.
Old National Bank Building
Spokane, Washington
June 2, 1937

Mr. Judson G. Rosebush
Appleton, Wisconsin

Dear Mr. Rosebush:

Our attorneys have prepared an agreement in accordance with our understanding with you concerning your indebtedness and the securities formerly pledged thereto. I am enclosing one copy of this agreement which has not as yet been executed. Will you kindly go over this and if it meets with your approval advise me at once and I will then refer it to the Reconstruction Finance Corporation for their approval. I am sending it to you before submitting it to the Reconstruction Finance Corporation so that should any changes be necessary they may be made before the approval of the Reconstruction Finance Corporation is obtained, which will obviate any possibility of our having to go back to them for a second approval.

In connection with your recent letter concerning the sale of the Inland Empire Paper Company

stock to you at this time, I do not believe that our trustees would be in favor of such a sale at any price that you would consider reasonable. The greatly improved earning position of the company during the past few months indicates that in the near future a much higher price for their securities might be justified and it is our opinion that the stock should not be sold at this time.

Kindly let me hear from you in connection with the approval of the agreement as soon as possible as it will take a little while to obtain the approval of the Reconstruction Finance Corporation.

Very truly yours,

L. A. STILSON,

L. A. Stilson, Vice President.

LAS:mbj

Enc. [154]

DEFENDANT'S EXHIBIT "7"

June 11, 1937

Mr. L. A. Stilson, Vice President
Investment & Securities Co.,
Old National Bank Building,
Spokane, Washington.

Dear Mr. *Silson*:

In reply to yours of June 2, the agreement enclosed seems to be satisfactory, except that on page 3 you have not made note of the fact that the United States Internal Revenue Department has a lien prior to yours. That has been covered by our correspond-

ence, but it seems to me it ought to be included in the agreement.

Then, on page 4 you speak about a five day period. If you will analyze this, you will see that practically speaking, it only gives me a day or so on account of the time which the mail takes. I wonder if you would not substantially lengthen this period.

Respectfully yours,

JGR/H [155]

DEFENDANT'S EXHIBIT 8

Investment and Securities Co.

Old National Bank Building

Spokane, Washington

June 16, 1937

Mr. Judson G. Rosebush

Appleton, Wisconsin

Dear Mr. Rosebush:

I have your letter of June 11, 1937, in which you state that the agreement which we submitted to you is satisfactory with the exception that you feel that a statement should be inserted that the United States Internal Revenue Department has a prior lien on your claim against the Exchange National Bank.

I have discussed this with our attorneys and they feel that such a citation in the agreement would be out of order as it has not yet been definitely determined whether or not their lien would be prior

to a proper assignment. This would be a matter that would have to be settle when, as, and if a disbursement would be made on the Exchange National claim. Due to the fact that we have notice of the lien of the government and the nature of the lien, our attorneys feel that the agreement should be satisfactory without such a statement as there could not possibly be any contention on our part that you had or were misrepresenting the status of the claim.

In connection with the time allowed in case of a sale of the stock of the Inland Empire Paper Company, our trustees are not willing to enter into any agreement that would contemplate a longer time for you to exercise the option to purchase. You will note in the contract that the notice would be sent to you by air mail, which would give you approximately three days in which to reply, and it was our opinion to extend the time longer might make it difficult for us to deal with the stock. We would, of course, endeavor to give you as much notice as could be given reasonably, but we could not agree to a period of longer than five days as set forth in the contract. [156]

I trust that the above will explain our position and that you will let me hear from you approving the contract as submitted as the Reconstruction Finance Corporation is becoming very pressing in their requirement that the status of the Inland Empire Paper Company stock be definitely determined and, we will not be able to submit this contract to

them until it is ready in definite form for their approval.

Very truly yours,

L. A. STILSON,

L. A. Stilson, Vice President.

LAS:mbj [157]

DEFENDANT'S EXHIBIT "9"

June 21, 1937

Mr. L. A. Stilson, Vice President,
Investment & Securities Company,
Spokane, Washington.

Dear Mr. Stilson:

Yours of June 16 is at hand. In reference to your second paragraph, I think that the agreement as drafted involves me in no possible misunderstanding so far as your Company is concerned, since from the start of these negotiations, you have had notice of the Tax Lien.

My fear on that matter arises from the fact that the Notice of Destraint set forth that I was not to transfer any more of my property until that Tax was paid, so that if I make the agreement with you as you have drafted it, I am, on the face of it, disregarding a notice of the Federal Internal Revenue Unit.

It seems to me, therefore, for my own protection as regards the Internal Revenue Unit, you should either redraft the agreement so that the Unit could not hereafter claim that I had violated their order;

or, if you do not want to do that, I should then present your proposed agreement to the Internal Revenue Unit, see if they were willing to let it stand as now drafted.

As you can clearly see from the above, I have a tremendous respect for the power of the United States government, and do not willingly want to run afoul of that power.

Respectfully yours,

JGR/H [158]

DEFENDANT'S EXHIBIT "10"

Investment and Securities Co.

Old National Bank Building

Spokane, Washington

June 30, 1937

Mr. Judson G. Rosebush

Appleton, Wisconsin

Dear Mr. Rosebush:

Your letter of June 21st addressed to our Mr. Stilson, has been referred to the undersigned inasmuch as Mr. Stilson is away on a vacation at the present time.

Our attorneys have rewritten the agreement to show that the Collector of Internal Revenue has filed an Order of Distrainment, and therefore the assignment to this company is subsequent and junior to any lien that the Collector of Internal Revenue may have acquired by reason of said order.

We are enclosing herewith two complete copies of the agreement, together with sheets three and four to be substituted in the copy you now have. When this has been done, we would like to have you sign all three copies and return them to us for signature. As soon thereafter as the agreement has been approved by the Reconstruction Finance Corporation one signed copy will be returned to you.

Very truly yours,

GEO L. KIMMEL,

GLK:mbj

Secretary. [159]

DEFENDANT'S EXHIBIT "11"

Investment and Securities Co.

Old National Bank Building

Spokane, Washington

July 21, 1937

Mr. Judson G. Rosebush

Appleton, Wisconsin

Dear Mr. Rosebush:

When we submitted to the Reconstruction Finance Corporation the agreement which was approved by you, their Washington office requested that there be inserted in the agreement the statement that fifty-one percent of the Inland Empire Paper Company common stock is subject to the pledge for the purpose of giving voting rights to the Reconstruction Finance Corporation. We have, therefore, redrawn the agreement and have inserted on pages four and five a paragraph complying with their request.

They have also requested that a separate assignment covering your claim against the Exchange National Bank be executed and specifically stated that in this assignment no mention should be made of the claim of the Bureau of Internal Revenue inasmuch as they expect to file this with the liquidating agent of the Exchange National Bank and the matter of the claim of the Bureau of Internal Revenue is fully covered in the agreement.

It is also our attorney's opinion that your Exchange National Bank stock certificates should be endorsed and forwarded to us. Very probably when, as, and if any payments are made by the liquidating agent he will wish to have these certificates presented to him and we should, therefore, have them available.

We are enclosing three copies of the agreement and three copies of the assignment which has been prepared by our attorneys and request that you execute these and return them to us. As soon as we have executed them and obtained the approval of the Reconstruction Finance Corporation, a copy of each will be returned to you for your records.

We would appreciate receiving these, duly executed, together with the stock certificates, at as early a date as possible so that we may get this matter cleared with the Reconstruction Finance Corporation.

Very truly yours,

L. A. STILSON

L. A. Stilson,

LAS:mbj Encs.

Vice President [160]

DEFENDANT'S EXHIBIT 12

July 27, 1937

Mr. L. A. Stilson, Vice President,
Investment & Securities Company,
Old National Bank Building,
Spokane, Washington.

Dear Mr. Stilson:

July

Replying to yours of ~~June~~ 21, the modification suggested in your first paragraph is satisfactory, and I have accordingly signed the three documents and return same herewith.

Regarding the matter of a separate assignment in which no mention is made of the claim of the Bureau of Internal Revenue, and the request of your attorney that the Exchange National stock Certificate be sent you, I am sorry to say that both these requests, in my opinion, are absolutely contrary ~~worthy~~ to the Notice of Destraint which the Internal Revenue Department filed against me, for the assignment stands as an independent document and makes no specific reference to the agreement under which the Claim of the Internal Revenue Department is given priority; and, moreover, the Notice of Destraint prohibits me from turning over any of my stock certificates to anyone until their claim is liquidated.

Now, of course, I may be in error on both of these matters and, accordingly, I am entirely willing to send the documents enclosed in yours of July 21 to the Collector of Internal Revenue in Milwaukee to see if I can sign the assignments; and if he says I

can do so, then I will do so. Accordingly, I await your advice on these two matters.

Will you kindly cancel my original and return the agreement of which the enclosed is a substitute.

Respectfully yours,

JGR/H

Enc. [161]

DEFENDANT'S EXHIBIT "13"

July 9, 1937

Mr. Geo. L. Kimmel, Secretary,
Investment & Securities Company
Old National Bank Building,
Spokane, Washington

Dear Mr. Kimmel:

In compliance with yours of June 30, I have inserted the pages you suggested and I am returning herewith the three documents properly signed and acknowledged.

I notice that in the old copy you had, on page 4, the words "air mail" inserted, so I have put that into the copies I am returning herewith.

Respectfully yours,

JGR/H

Enc. [162]

DEFENDANT'S EXHIBIT 14

These were the two rejected sheets (pencil)
as collateral security to the obligations of the Pledg-

er, at the prices named and the application of the proceeds thereof, as follows:

Applied on Note in the principal amount of Twenty-five Thousand Dollars (\$25,000.00), dated November 30, 1932, the proceeds of:

325 shares of Nekoosa-Edwards Paper Com-	
pany common stock at \$30.00 per share,....	\$ 9,750.00
600 shares of Northern Paper Mills com-	
mon stock at \$10.00 per share,.....	6,000.00

Total credited to above Note,.....	\$15,750.00
------------------------------------	-------------

Applied on Note in the principal amount of Seventy-five Thousand Dollars (\$75,000.00), dated December 19, 1932, the proceeds of:

750 shares of Northern Paper Mills com-	
mon stock at \$10.00 per share,.....	\$ 7,500.00
820 shares of Inland Empire Paper Com-	
pany common at	1.00

Total credited to above Note,.....	\$ 7,501.00;
------------------------------------	--------------

The party of the second part further agrees to and does hereby assign to party of the first part as security to the balance of indebtedness owing by the party of the second part to party of the first part any recovery which may be made by or on behalf of party of the second part from or on account of an assessment paid on stock of Exchange National Bank, Spokane, Washington, and further of the first part agrees to make, execute and deliver to party any further instruments or documents necessary, needful and proper to make this assignment for collateral purposes effective and to enable party of the first part to recover any amounts which may or shall be due by reason of the payment of such assessments on said Exchange National Bank stock.

In consideration of the foregoing, the party of the first part agrees that no sale of all or any part of said 820 shares of Inland Empire Paper Company common stock shall be made before April 1, 1938, unless consented to by party of the second part; that if any sale of said stock shall be made subsequent to April 1, 1938, and prior to April 1, 1939, the party of the first part will give and grant unto party of the second part an opportunity to purchase all or any part of said 820 shares of Inland Empire Paper Company stock at the price at which party [163] of the first part shall contemplate selling it, and that party of the second part shall have a five day period to elect to purchase or not to purchase all or any part of said stock, during which five day period the party of the first part will not sell the stock to anyone else. Said five day period shall begin with the date and time of depositing a letter, full first class airmail postage prepared, in the United States mails, addressed to the last known address of party of the second part, and it is expressly understood that if party of the second part shall decide to accept the offer of sale so given by the Company he will at once communicate his acceptance by telegram or telephone to the Company and will forward bank draft or cashier's check in full payment thereof at once, so that said bank draft or cashier's check shall be in the hands of the Company not later than five days after the expiration of the first five day period during which the offer shall be accepted. Following the expiration of said first five day period if said offer shall not be accepted, or the expiration of five

days thereafter, if said offer shall be accepted but payment shall not be received within said last five day period, the Company shall be under no further duty to withhold said stock from the market and may sell said stock free and discharged of any of the terms and provisions of this Agreement.

It is further understood and agreed that in the event of the sale of all or any part of said 820 shares of Inland Empire Paper Company common stock on or before April 1, 1939, the Company will credit upon the indebtedness of the party of the second part the excess of the sale price of all or any part of said stock over [164]

DEFENDANT'S EXHIBIT 15

(Copy)

Stocks—Mortgages—Farms—and—Timber Lands
PATTEN Judson G. Rosebush, President
FINE Judson G. Rosebush, Jr., Secretary
PAPERS

Incorporated Appleton, Wisconsin
June 16, 1940

Mr. Charles P. Robbins
Shareholders' Agent
Spokane, Wash.

Dear Mr. Robbins:—

Yours of June 10 was forwarded to me away from home.

There is outstanding against me a very large claim of U. S. Internal Revenue Unit for income taxes which has not yet been settled or compromised, and they hold that this claim is a claim prior to all other claims upon my assets, except such as were hypothecated before their claim was filed.

After this claim was filed and covered by a Notice of Dstraint, I made an agreement with Investment & Securities Company assigning them my claim to dividends from Exchange National Bank, but specifically setting forth in said agreement that this assignment by me was junior to any claim of U. S. Internal Revenue Unit, as above, to said dividends.

I am agreeable to having the Investment and Securities Co. give you a copy of this agreement, wherein you will find set forth the junior character of their claim.

I have steadily maintained with Investment and Securities Company the position that this assignment of my dividend rights to Exchange Nat. Bank stock was valueless, until and unless the prior claim of Gov. was satisfied. That is my position now.

Respectfully,

(Signed) JUDSON G. ROSEBUSH

P. S. Please advise in due course what you do on the matter. My own wish is that you issue and hold my check, pending settlement of above matters.
J. G. R. [165]

DEFENDANT'S EXHIBIT—16-E

(Copy)

Form 17A—Rev. Oct. 1935

Treasury Department

Internal Revenue Service

NOTICE AND DEMAND FOR INCOME TAX

Notice is hereby given that there has been assessed against you the amount of tax stated below. Demand is hereby made for the immediate payment of said tax. If payment is not made within ten days after date of this notice, interest will accrue at the rate of 6 percent per annum from the date shown below until the tax is paid.

Date Feb-27-1934

GPO 2—9487

To avoid interest at the rate of 6 percent per annum this tax must be paid within ten days from the date of this notice and demand to the Collector of Internal Revenue, at Milwaukee, Wisconsin.

Old Balance	Date	Tax	Amount Paid	Balance Payable
Assessed	Tax	21345.84		
2/9/34	Int	6278.01		
	2/28/34		1199.62-Cr	26,161.06
	4/10/34		263.17-Cr.	

Remarks

1934 Feb 15P #2

yr. 1928 Income 272B RAR

Collector's Paid Stamp

Date.....

Judson G. Rosebush
117 N Park Avenue
Appleton Wisconsin

To The Collector of Internal Revenue:
I enclose herewith the sum of \$.....
in payment of the tax shown above.

Name.....

Address.....

Return This Form With Remittance

DEFENDANT'S EXHIBIT 16-F

Form 21 A

Copy

Treasury Department

SECOND NOTICE AND DEMAND

Internal Revenue Service

FOR INCOME TAX

Revised Jan. 1936

Balance Forward	Date	Charge	Last Credit	Unpaid Balance
Assessed	Tax	21345.84		
2/9/34	Int	6278.01		
	2/28/34		1199.62-Cr.	26,161.06
	4/10/34		263.17-Cr.	

Account Number and Remarks

1934 Feb-15P #2

yr. 1928 Income 272B

RAR

Collector's Paid Stamp

Date of First Notice:

2/27/34

Date of This Notice:

3/23/34

Judson G Rosebush

117 N Park Avenue

Appleton Wisconsin

The records of this office indicate that you are delinquent in making payment of the unpaid balance of tax and/or interest shown above.

It therefore becomes my duty to demand that this unpaid balance be paid, together with interest computed at the rate of 6 per cent per annum from the date prescribed for its payment to the date of payment, which interest has been incurred by failure to pay the unpaid balance within the prescribed time. If payment of the amount due to Government is not received within ten days from the date of this notice and demand, the Law provides that collection with costs may be made, if necessary, by seizure and sale of property.

Please return this notice or a copy thereof with your remittance to the

Collector of Internal Revenue at Milwaukee Wisconsin

Unpaid balance	\$26,161.06
Delinquency interest computed from 2/27/34 to	
4/10/34	382.02

Total unpaid balance and interest thereon due as
of the date indicated above\$26,543.08

(Signed) O. A. LA BUDDE
Collector of Internal Revenue.

U. S. Government Printing Office 16—15761 [167]

DEFENDANT'S EXHIBIT 16-G

Form 69

Treasury Department

Internal Revenue Service

Revised May 1939

Copy

No. 31365

WARRANT FOR DISTRRAINT

Balance Forward	Date	Charge	Last Credit	Unpaid Balance
Assessed	Tax	21345.84		
2/9/34	Int	6278.01		
	2/28/34		1199.62-Cr.	26161.06
	4/10/34		263.17-Cr.	

Account Number and Remarks

1934 Feb 15P #2

yr 1928 Income 272B RAR

Judson G. Rosebush

117-N Park Avenue

Appleton Wisconsin

Date of First Notice:

2/27/34

Date of Second Notice:

3/23/34

To, Deputy Collector.

Whereas, in pursuance of the provisions of the Acts of Congress relating to internal revenue the above-named person or persons is or are liable to pay the tax or taxes assessed against him, or them,

in the amount or amounts named hereinbelow, together with penalties and interest prescribed by law for failure to pay said tax or taxes when the same became due; And Whereas, ten days have elapsed since notice was served and demand made upon said person or persons for payment of said tax or taxes; And Whereas, said person or persons still neglect or refuse to pay the same: You are hereby commanded to levy upon, by distraint, and to sell so much of the goods, chattels, effects, or other property or rights to property, including stocks, securities, and evidences of debt, of the person or persons liable as aforesaid, or on which a lien exists for the tax or taxes, as may be necessary to satisfy the tax or taxes, with such additional amounts, including interest, as are shown in the statement below, and also such further sum as shall be sufficient for the fees, costs, and expenses of the levy; but if sufficient goods, chattels, or effects are not found, then you are hereby commanded to seize and sell in the manner prescribed by law so much of the real estate of said person or persons, or on which a lien exists for the tax or taxes, as may be necessary for the purposes aforesaid. You will do all things necessary to be done in the premises and strictly comply with all requirements of law, and for so doing this shall be your warrant, of which make due return to me at this office on or before the sixtieth day after the execution hereof. [168]

Collect 50c Additional to cover costs of
Collection

Unpaid balance	\$26,161.06
Penalty of 5 per centum	
Delinquency interest computed from 2/27/34 to 4/10/34	382.02

Total tax, penalty, and interest due on date of second notice	\$26,543.08
Amount of additional interest due from date of sec- ond notice	

Witness my hand and official seal at Milwaukee,
Wis. this 14th day of April, 1934

Interest to be computed on \$26161.06 at rate of
 $\frac{1}{2}$ of 1% per month to actual date of payment.
From 4/10/34

(Signed) O. A. LA BUDDE

Collector of Internal Revenue.

Internal Revenue Collection District of Wiscon-
sin

U. S. Government Printing Office 2—1376

F-668 4/16/34

[169]

DEFENDANT'S EXHIBIT 16-H

Treasury Department
Internal Revenue Service
Milwaukee, Wis.

April 17, 1934.

Office of the Collector
District of Wisconsin
In Reply Refer to

FO*JFA

Received
(Illegible)

D. W. No. 31365

Judson G. Rosebush,
117 N. Park Avenue,
Appleton, Wis.

The Commissioner of Internal Revenue has made an assessment against you amounting to ~~\$26689.56~~. Notice of this assessment has been given you and demand for its payment has been made upon you. Because of your failure to pay the amount due, the Collector of Internal Revenue for the District of Wisconsin has issued a Warrant of Distrainment directing me to seize and sell so much of your property as will pay the amount assessed plus interest from the date assessed at one per cent per month to date of payment.

If the amount now due, ~~\$26689.56~~, is paid on or

27

before ~~April 17, 1934~~, it will obviate the necessity of seizing and selling your property as directed by the Warrant of Distrainment.

Make remittance payable to the Collector of In-

ternal Revenue and forward to Chief of Field Division, Internal Revenue Department, Room 210 Federal Building, Milwaukee, Wisconsin. Return this letter with remittance.

Mim. #1140

Chief of Field Division.

[170]

DEFENDANT'S EXHIBIT 16-I

Form 668—Revised May 1939

(Copy)

Treasury Department

Internal Revenue Service

NOTICE OF TAX LIEN UNDER INTERNAL
REVENUE LAWS

No. 7501

United States Internal Revenue,

.....District of Wisconsin

Milwaukee, Wis., April 16, 1934

Pursuant to the provisions of Sections 3670, 3671, and 3672 of the Internal Revenue Code of the United States, notice is hereby given that there have been assessed under the Internal Revenue laws of the United States against the following-named taxpayer, taxes (including interest and penalties) which after demand for payment thereof remain unpaid, and that by virtue of the above-mentioned statutes the amount of said taxes, together with penalties, interest, and costs that may accrue in addition thereto, is a lien in favor of the United States upon all property and rights to property belonging to said taxpayer, to wit:

Name of taxpayer—Judson G. Rosebush
Residence or place of business—117 N. Park Ave.,
Appleton, Wisconsin
Nature of tax—Income Tax
Taxable period—1928
Amount of tax assessed—\$26,161.06
Additional (penalty) tax assessed Int. non-payment
\$382.02; together with add'l int. : rate of 1%
per month from 4/10/34 to date of payment.
Date assessment list received 1934 Feb 15P #2
19.....

O. A. LA BUDDE

Collector.

Certificate of Officer Authorized by Law
to Take Acknowledgments

State of Wisconsin

County of Milwaukee—ss:

On this day personally appeared before me a
Notary Public in and for the State and County
(Official Title)

aforesaid, O. A. La Budde Collector of Internal
Revenue for the district of Wisconsin to
me well known as the person who executed the fore-
going instrument, and acknowledged that he exe-
cuted the same for the purposes therein expressed.

In witness whereof I have hereunto set my hand
and official seal, [171] this the 16th day of April,
1934

[Seal]

WM. RUGGABER

Notary Public

[Seal]

(Official Title)

My commission expires Mar. 27, 1938

To Clerk of U. S. District Court
Milwaukee, Wisconsin

Exhibit I

U. S. Dist. Court, East. Dist. of Wis. Filed Apr
19 1934 at 10 o'clock A. M. B. H. Westfahl, Clerk.

(Clerk's Note: Here follows Internal Revenue Code Chapter 36, Sub-chapter B—Lien for Taxes and Instructions which are omitted.)

DEFENDANT'S EXHIBIT 16-J

(Clerk's Note: Defendant's exhibit 16-J is the same as Defendant's exhibit 16-I except that it was sent to Register of Deeds Appleton, Wisconsin, and is endorsed as follows: State of Wisconsin Outagamie County Received and Filed Apr 20 1934 at 8 o'clock A. M. A. G. Koch Register) [172]

DEFENDANT'S EXHIBIT 16-K

Copy

Patten Paper Company,
Appleton, Wisconsin

April 30, 1934.

Miss Ethel M. Hillburg,
Deputy Collector of Internal Revenue,
Appleton, Wisconsin.

Dear Miss Hillburg:

In harmony with arrangements made last Thurs-

day with Mr. O. A. LaBudde, Collector of Internal Revenue of this district, I am handing you herewith our check for \$100.00 to apply on assessment made by the Commissioner of Internal Revenue on February 27, 1934, amounting to \$26,424.23.

Respectfully yours,

JUDSON G. ROSEBUSH.

JGR:K

DEFENDANT'S EXHIBIT 16-L

Copy

Patten Paper Company,
Appleton, Wisconsin.

July 2, 1934.

Miss Ethel M. Hillburg,
Deputy, Collector of Internal Revenue,
Appleton, Wisconsin.

Dear Miss Hillburg:

I am enclosing herewith check for \$100.00 which is the June payment on income tax levied against our 1928 income.

Respectfully yours,

JUDSON G. ROSEBUSH

JGR:K

Enc. [173]

DEFENDANT'S EXHIBIT 16-M

Form 668—A—Dec., 1922

Treasury Department

Internal Revenue Service

NOTICE OF LEVY

United States of America,
Wisconsin Collection District,
State of Wisconsin

To Barbara J. McNaughton Rosebush

(Name of bank with which taxpayer has money
on deposit)

At Appleton, Wis.

You are hereby notified that there is now due, owing, and unpaid from Judson G. Rosebush to the United States of America the sum of Twenty-nine thousand five hundred twenty-seven & 72/100 dollars (\$29,527.72) as and for an internal revenue tax.

You are further notified that all property and rights to property now in your possession and belonging to the aforesaid Judson G. Rosebush, and all sums of money owing from you to the said Judson G. Rosebush are hereby seized and levied upon for the payment of the aforesaid tax, together with penalties and interest, and demand is hereby made upon you for the sum of Twenty-nine thousand five hundred twenty-seven & 72/100 dollars (\$29,527.72) of the amount now owing from you to the said Judson G. Rosebush or for such lesser

sum as you may be indebted to him, to be applied in payment of the said tax liability.

Dated at Appleton, Wisconsin this 16 day of December, 1935. Interest to be computed at the rate of 6% per annum from November 21, 1935.

GUY J. JOHNSON

Deputy Collector of Internal
Revenue.

Government Printing Office 2—12503 [174]

DEFENDANT'S EXHIBIT 16-N

(Clerk's Note: Defendant's Exhibit 16-N is a copy of Defendant's Exhibit 16-G.)

DEFENDANT'S EXHIBIT 16-O

(Clerk's Note: Defendant's Exhibit 16-O is identical with Defendant's Exhibit 16-I except that it is not endorsed with the filing mark in the Clerk's Office.)

DEFENDANT'S EXHIBIT 16-P

(Defendant's Exhibit 16-P is identical to Defendant's Exhibit 16-J except that it is not endorsed with the filing mark of the Register of deeds.) [175]

DEFENDANT'S EXHIBIT 16-Q

Treasury Department

Internal Revenue Service

Office of Collector

District:

Wisconsin

December 16, 1935

To Barbara J. McNaughton Rosebush

Appleton, Wisconsin

Demand is hereby made upon you for the surrender to me or my deputy serving this notice of the following described property:

Certificate #111	Patten Paper Co.	100 shares
" 118	" " "	25 "
" 130	" " "	50 "
" 133	" " "	5 "
" 136	" " "	5 "
" 138	" " "	60 "
" 140	" " "	25 "
" 141	" " "	50 "
" 142	" " "	50 "
" 179	" " "	91 "

which have now been transferred to your name by new certificate #197 for 461 shares,

Certificate #102	Outagamie Paper Co.	100 shares
" 116	" " "	50 "
" 126	" " "	50 "
" 127	" " "	50 "
" 128	" " "	50 "

which have now been transferred to your name by new certificate #138 for 300 shares,

Certificate #5	Rosebush Brothers Inc.	50 shares
" 9	" " "	12½ shares

which have now been transferred to your name by new certificate #22 for 62½ shares.

Certificate #C62 Wood County National Bank, 7½ shares, which have now been transferred to your name by Certificate #C99 for a like number of shares;

Certificate #117 State Bank of Florence, 5 shares, which have now been transferred to your name by new certificate #194 for a like number of shares, all of which property formerly belonged to Judson G. Rosebush of Appleton, Wisconsin, and which was accepted by you from him subsequent to April 16, 1934, on which date a lien was duly filed by the Collector of Internal Revenue for the District of Wisconsin against said Judson G. Rosebush for an internal revenue tax, then due and owing by him to the United States. Failure to comply with this demand within five days from the date of service will be deemed a refusal.

GUY J. JOHNSON

Collector of Internal Revenue for the District of
Wisconsin

Served on Barbara J. McNaughton Rosebush at
2:15 P. M. on December 16, 1935 by Guy J. Johnson
Deputy Collector [176]

DEFENDANT'S EXHIBIT 16-R

Know All Men by These Presents

That I, Barbara J. McNaughton Rosebush, of
the City of Appleton, in the county of Outagamie,

State of Wisconsin, have made, constituted and appointed, and by these presents do make, constitute and appoint Judson G. Rosebush, (my husband), of the city of Appleton, in the County of Outagamie, and state of Wisconsin, my true and lawful attorney, for me and in my name, place and stead, to represent me at any and all meetings, general and special, of the stockholders of any and all corporations wherein I now or may hereafter hold stock, and for me and in my name and stead to vote my stock and otherwise to act as my proxy, at all such meetings as shall hereafter be held, from time to time, for all purposes that may or shall come before such meetings, granting to my said attorney all of the powers I might or should possess if personally present at such meetings, and for that purpose to sign and execute any proxies or other instruments in my name and on my behalf; also granting to my said attorney full power and authority for me and in my name to collect, receive, and receipt for any and all dividends which shall at any time, and from time to time, be payable to me upon said stock and shares of stock, and to execute in my name and stead any and all writings in connection with and relating to said stock that he may see fit, also to assign, sell, or hypothecate any of said stock and to purchase any new stock in said corporations or any other corporations, in my name and stead, using my funds therefor, the same as I might or could do if personally present; also, in my name and stead, to negotiate for, grant, bargain, sell, lease and mortgage, any and all lands, real

estate, tenements, and hereditaments, in whole or in pieces or parcels, that I may own, possess or have any interest in, wheresoever situated, whether within or without the State of Wisconsin, also all lands, tenements and hereditaments of which I may hereafter become seized or possessed, from time to time, and at any times, and for such prices, and upon such terms and conditions as my said attorney may in his discretion see fit; and for the purpose of carrying out the foregoing and following acts, my said attorney is hereby empowered to execute, acknowledge, and deliver, in my name [177] and stead, all deeds of conveyance, with or without covenants of warranty, mortgages, satisfactions of mortgages, leases, contracts, promissory notes, and any other instruments of writing, including the release of dower and homestead rights, the same as I might or could do if personally present; also, in my name and stead to invest or otherwise disburse all or any of my moneys that may come to his possession from any source whatsoever; also, in my name and stead, to demand, sue for, at law or in equity, and collect, and give receipts for payments made upon, any and all debts, rights, accounts and demands due or to become due to me; also giving and granting unto my said attorney full power and authority, for me and in my name to take and receive any promissory note and notes secured by real estate mortgage or mortgages, or otherwise (or without security) on or for any sale or sales of my property or for any other purpose, and

to execute, acknowledge and deliver in my name proper and sufficient releases of mortgages and to accept in my name, releases of mortgages now standing or hereafter standing in my name; I also empower my said attorney to borrow money in my name and stead, at such times, in such sums, and under such terms and conditions as he in his discretion may see fit, and to execute promissory notes in my name and to evidence and bind me and my estate upon such loans, and to deposit and hypothecate, upon such terms and in such amounts as he sees fit, any securities belonging to me to secure and as collateral to such loans. I also hereby empower my said attorney to sign checks in my name and withdraw any portion of my funds, in such amounts and at such times as he sees fit, from whatever bank any of my funds may be on deposit; and I hereby direct that any bank wherein I have funds on deposit, or may hereafter have funds on deposit, shall honor all checks signed in my name by my said attorney; giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about said premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying all that my said attorney, or his substitute, shall lawfully do or cause to be done by virtue thereof.

And whereas by a power of attorney, dated May 18th, 1908, under my hand and seal, I, as Barbara

Jane McNaughton, appointed John McNaughton (my father) to be my attorney, with the powers and authorities [178] therein mentioned, and whereas said John McNaughton died on the 16th day of April, 1910.

Now therefore, I do hereby revoke said power of attorney to said John McNaughton; provided always that this revocation shall not prejudice or affect anything done or caused to be done by the said John McNaughton, or any substitute acting under him, in the exercise of any powers or authorities enumerated thereunder up to the date of this revocation.

In Witness Whereof, I have hereunto set my hand and seal, the 28th day of May, A. D. 1910.

[Seal]

BARBARA J. McNAUGHTON
ROSEBUSH

In the presence of

C. S. DICKINSON

P. L. SCHNELLER

State of Wisconsin,
Outagamie County,—ss.

Personally came before me, this 28th day of May, A. D. 1910, the above named Barbara J. McNaughton Rosebush, to me known to be the person who executed the foregoing instrument, and acknowledged the same.

[Notarial Seal] CHARLES S. DICKINSON,

Notary Public, Outagamie County, Wisconsin.

My commission expires Sept. 28-1913.

State of Wisconsin,
Outagamie County.—ss.

I, B. J. Zuehlke Register of Deeds in and for the County and State aforesaid, do hereby certify, that I have duly compared the foregoing and annexed copy of a Power of Attorney with the original record thereof as recorded in my said office, on the 16 day of June A. D. 1910 at 2 o'clock P. M., in Volume 136 of Deeds on page 272 and that the same is at a correct transcript therefrom, and of the whole thereof.

In Testimony whereof, I have hereunto set my hand and affixed the seal of my said office at Appleton, this 13 day of May A. D. 1911

[Seal]

B. J. ZUEHLKE

Register. [179]

[Title of Court and Cause.]

OPINION OF THE COURT

Schwellenbach, District Judge [180]

This case involves that portion of the controversy concerning the tax problems of Judson G. Rosebush of which disposition was not made in the case of *United States vs. Rosebush*, 45 Fed. Supp. 664. In that opinion will be found a statement concerning the tax and assessment involved here. The assessment appeared on the Commissioner's list which was received by the Collector

of Internal Revenue at Milwaukee, Wisconsin, on February 18, 1934. Demand for payment was made on February 27, 1934.

This action was commenced by Charles P. Robbins, Shareholders Agent for the shareholders of the Exchange National Bank of Spokane, Washington. It is in the nature of an interpleader. Robbins has deposited in this Court sixty-five hundred dollars (\$6,500) being the amount of Rosebush's share of the dividends on account of assessments paid by him on his shares in the Exchange National Bank, a national banking association which, in 1928, became insolvent and which assessments were paid by him in 1929. The record discloses that Robbins was appointed as Shareholders Agent in 1936 after all creditors of the insolvent bank had been paid in full and that since that date Robbins has liquidated all of the assets then turned over to him by the Receiver of the insolvent bank. Rosebush and his wife, Barbara McNaughton Rosebush, were joined as parties in this action and were both served with process. Neither of them appeared and defaults have been entered against them.

The Investment and Securities Company, a Washington corporation, intervened in the action and asserted its claim to the fund on the basis of an assignment to it on July 27, 1937, by which Rosebush pledged any recovery to which he might be entitled as security for the balance of the indebtedness due by Rosebush to Investment and Security Company (hereafter called the Intervenor.) The correspondence leading up to the assignment

and the assignment itself clearly show that [181] it was made with knowledge of the asserted lien by the United States for taxes. The assignment itself specifically stated that it was subsequent and junior to such lien if one existed. It is conceded that the Intervenor filed notice of the assignment with Robbins on March 14, 1938.

The United States and Frank J. Kuhl, Collector of Internal Revenue for Wisconsin, have both appeared and they both assert the right of the Government to this money on the basis of the claim of tax lien and also on the basis of a writ of fieri facias issued out of the United States District Court for the Eastern District of Wisconsin November 27, 1941, by virtue of a judgment in favor of the United States against Rosebush in the amount of \$37,220.85, for the taxes noted in the Commissioner's assessment list in 1943.

Since whatever right the Intervenor acquired under the assignment of July 27, 1937, was junior and inferior to a tax lien of the Government, the primary question in this case is whether, on that date, the Government had a lien against the right which Rosebush assigned to the Intervenor. Intervenor alleges in its complaint and contends in its brief that, if the Government had a lien, such lien was ineffective as to it because of the failure to file notice of the lien in the State of Washington. The Intervenor contends that the situs of the property was here and that it, as pledgee, acquired a right superior to that of the Government. The error in this reasoning by the Intervenor arises from the

fact that, (in 1937, Section 1562 of the Internal Revenue Code (now Title 26 U.S.C.A. Sec 3672 applied only as to a mortgagee, purchaser or judgment creditor. The word "pledgee" was not inserted until the act was amended on June 29, 1939, 53 Stat. 882, which amended the Internal Revenue Code of 1939, 53 Stat. 449. At no place does the 1936 Revenue Act refer to this question. (See Report, Ways and Means Committee, House of Representatives, 76th Cong. 1st Session, #855, p. 25 and 26; Report, Finance Committee, U. S. Senate, 76th Cong. 1st Ses- [182] sion, #648, p. 10; Congressional Record, Vol. 84, pt. 7, p. 7482, 7500.) Intervenor's error in this regard no doubt results from the fact that the historical note following 26 U.S.C.A. Sec. 3672, refers to an amendment of June 25, 1936, ch. 804, 49 Stat. 1921, which is erroneous. The chapter and page refer to an amendment dealing with the name of the District Court for the District of Columbia. The retroactive features of the 1939 amendment applied only to subsection (b) which involved purchasers of securities "without notice or knowledge of the existence of such lien."

This being true, we are confronted with the situation which was described by Paul and Mertenés in their "Law of Federal Income Taxation" sec. 47.38 as follows: "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount 'shall be a lien' which shall arise at the time the assessment list was received by the

Collector unless 'another date is specifically fixed by law.' This provision does not touch the validity or effect of the lien as between the Government and mortgagees, purchasers and judgment creditors,—as between them, the statute is specific. Since the specific clause providing for the invalidity of liens must mean that, as between the Government and any other creditor or lien claimants, the Government's lien must prevail from the time of demand without further filing." The evidence here is undisputed that the assesment list was filed with the Collector and demand made in 1934. Consequently, if the claim which Rosebush pledged to the Intervenor on July 27, 1937, was property or a right to property, real or personal, at the time of the filing of the assessment list and demand, then the assignment to the Intervenor was subordinate and inferior to it because the statute, 26 U.S.C.A. sec. 3670, provided if any person liable to pay any tax neglects or refuses to pay the same after [183] demand "the amount (including any interest penalty, additional amount or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property whether real or personal belonging to such person" and further provided (26 U.S.C.A. 3671) "* * * The lien shall arise at the time the assessment was received by the Collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time." 26 U.S.C.A. sec. 3671. The statutes covering the collection of taxes are

broad and comprehensive and the lien for taxes attaches to all of the property in the possession of the taxpayer to the extent of his interests and his rights thereto. *Metropolitan Life Ins. Co. v. United States*, 107 F.(2) 311. Property is a word of very broad meaning and when used without qualification may reasonably be construed to include obligations, rights and other intangibles as well as physical things. *Fidelity & Deposit Co. of Maryland vs. Arenz*, 290 U. S. 66. Property within the tax laws should not be given a narrow or technical meaning. *Commissioner of Internal Revenue vs. Stephens-Adamson Mfg. Co.*, 51 F.(2) 681. Where a right is subject to ownership or transfer and may be brought within the dominion and control of the court through some recognized process, it is property. *Citizens State Bank of Barstow, Tex., vs. Vidal*, 114 F. (2) 380, 383. The fact that two or more persons may jointly own property will not prevent the lien from attaching to the taxpayer's share. *Cannon vs. Nichols*, 80 F. (2) 934. Moneys derived from the liquidation of assets held by a receiver or shareholders' agent after the payment of all of the obligations of an insolvent national bank may be recovered in an action at law [184] by the contributing shareholder against the receiver who refuses to repay it. *McCarty vs. Gault*, 24 F. Supp. 977.

The Intervenor urges that the tax lien only covered such property as the taxpayer owned and possessed at the time of the filing of the assessment list and the demand. It urges that all of

the assets belonging to the bank were, on that date, in the hands of the United States Government acting through the Comptroller of the Currency and his duly designated receiver. 12 U.S.C.A. 192. However, the moneys which are the subject of this controversy do not stem alone from the assets of the bank but also from the accretions thereto acquired by assessments for the purpose of furthering the liquidation of the assets of the insolvent bank and the persons contributing to this result are entitled to special treatment over and above that to which their ownership of shares in the association entitles them. 6 U.S.C.A. 197. In *McCarty vs. Gault*, *supra*, Judge Fee graphically describes this distinction: "the shareholders, who notwithstanding the compulsion of law, contributed nothing to the fund, are entitled to little consideration. The stock held by each of them became a liability instead of an asset upon the incidence of insolvency. The statute indicates a purpose to give to these stockholders a share in the final residue only. The stockholder who has paid the assessment in full, * is given a peculiar position. He is entitled to enforce a liability of the bank to him upon the same footing as other claimants. This privilege is not extended to a shareholder who has not paid the assessment." In that case, it was held that a shareholder was entitled to receive interest on the amount of the assessment from the date of payment by him. Clearly, such a right constitutes property and, although in February, 1934, it was unliqui-

dated and the amount undetermined, it was then a property right belonging to Rosebush to which the lien would then attach. Re: Rosenberg's Estate, 269 N. Y. 244, 199 N. E. 206, certiorari denied, 298 U. S. 669; United States vs. Canfield, 29 F. Supp. 734. [185]

There was no essential change in the character of the assets from which this money was derived as between February, 1934, and July, 1937. Its possession had been transferred from the Comptroller's receiver to the shareholders' agent. At both times, it consisted of notes and mortgages and stocks and bonds which were being liquidated and reduced to cash. The Intervenor, asserting as it does that Rosebush had an interest in those assets which he could pledge in July, 1937, can hardly be heard to say that he did not have an interest in those assets which could be subjected to a lien in 1934. It is true that Intervenor defends its assignment on the basis of two Washington cases (Straus vs. Wilsonian Investment Company, 177 Wash. 167; Reconstruction Finance Corporation vs. Hambright, 116 Wash. Dec. 71) in which the validity of after acquired property clauses in chattel mortgages is upheld. But the agreement of July 27, 1937, contains no such language.

There is nothing in the case of United States vs. Long Island Drug Co., Inc., 115 F.(2) 983, on which Intervenor relies, which runs counter to this conclusion. In that case, the moneys attempted to be subjected to the lien were wages earned by

the taxpayer after the filing of the assessment list and the demand for payment and after the levy upon the defendant. In that case, the court definitely recognized the rule laid down in *Re Rosenberg's Estate*, *supra*, and in *United States vs. Canfield*, *supra*. It used this language: "They (future earnings) are contingent upon performance of a contract of service and represent no existing rights of property. They are quite distinguishable from the right of a *cestui que trust*, whose equitable life estate may be subjected to a lien on behalf of the Government for unpaid taxes." In the *Long Island Drug* case the court specifically rejected its previous ruling in *United States vs. Western Union Telegraph Co.*, 50 F. (2) 102, to the effect that the lien is limited to tangible property as "dictum based on a too narrow reading of the statute." Furthermore, I would respectfully [186] point out that, in making the statement "rights which do not exist at the time of the demand upon the taxpayers are not subjected to any lien," the Second Circuit relied on *United States vs. Pacific Railroad*, 1 Fed. 97, which was decided when the statute provided "the amount shall be a lien in favor of the United States from the time it was due until paid", Act of July 13, 1866, 14 Stat. 98. In 1934, the statute provided: "The lien shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time." 26 U.S.C.A. Sec. 3671, 45 Stat. 875, Rev. Act of 1928. On this point, see *Graves vs. Commissioner*, 12 B. T. A. 124, General Counsel Memorandum,

C. V. VII-2, p. 94; Minnesota Mutual Life Insurance Co. vs. United States, 47 F. (2) 942; United States vs. Taft, 44 F. Supp. 564.

Intervenor further urges the pertinency in this case of *Curry vs. McCanless*, 307 U. S. 357, *Graves vs. Elliott*, 307 U. S. 383, *State Tax Commission of Utah vs. Aldrich*, 316 U. S. 174. Had the protection of the Statute, 26 U.S.C.A. 3672, been extended to pledgees prior to the execution of the agreement of July 27, 1937, these cases might have been valuable to the consideration of this case. Even so, they would not have been decisive in Intervenor's favor. This for the reason that, while they extended the right of taxation to a state other than the domicile of the owner of intangibles, they did not attempt to prevent the state in which the owner was domiciled from exercising its power of taxation. As Mr. Justice Jackson, in his vigorous dissent in *State Tax Commissioner vs. Aldrich*, 316 U. S. 174, 191, put it: "The right of a State to tax succession to corporate stock by death of one domiciled therein, while not abrogated, is now subjected to an interfering and overlapping right of the State which chartered the corporation to tax the same stock transfer * * *." [187] It is true that, in each of these cases, the question of situs of intangibles is considered. In none of them does the Supreme Court hold that that situs is limited for purposes of state taxation to the domicile of the corporation issuing the intangibles or of the trustee who may have legal title to them.

The reach of the ruling so far as it interests us here is described by the present Chief Justice in *Curry vs. McCanless*, 307 U. S. 357, 372, "If it be thought that it is identity of the intangibles with the person of the owner at the place of his domicile which gives power over them and hence 'jurisdiction to tax,' and this is the reason underlying the maxim *mobilia sequuntur personam*, it is certain here that the intangibles for some purpose are identified with the trustee, their legal owner, at the place of its domicile and that in another different relationship and for a different purpose—the exercise of the power of disposition at death, which is the equivalent of ownership—they are identified with the place of domicile of the testatrix, Tennessee. In effecting her purposes, the testatrix brought some of the legal interests which she created within the control of one state by selecting a trustee there and others within the control of the other state by making her domicile there. She necessarily invoked the aid of the law of both states, and her legatees, before they can secure and enjoy the benefits of succession, must invoke the law of both." I see nothing in these cases which supports Intervenor's position.

Since it is apparent that the United States had a lien on this property on July 27, 1937, then that provision of the Intervenor's contract which makes its assignment subsequent and junior to such lien, makes necessary the ruling that the funds here involved should be awarded to the United States

less the sum of Two Hundred Dollars (\$200.00) reasonable attorney's fees for Robbins.

L. B. SCHWELLENBACH

United States District Judge

March 31, 1943

[Endorsed]: Filed March 31, 1943. [188]

[Title of Court and Case.]

ALTERNATIVE MOTION FOR JUDGMENT
NOTWITHSTANDING DECISION AND
FOR A NEW TRIAL

Comes now complainant and petitioner, Investment and Securities Co., and moves the court for an order in its favor in the sum of \$6500.00 notwithstanding the decision on the ground that the complainant and petitioner Investment and Securities Co. was the owner of a prior claim to said sum of \$6500.00 superior to the claim of the United States of America, for the reason that prior to December 1, 1941, no notice of tax lien was filed either with the Clerk of the Federal District Court of the Eastern District of Washington, or the County Auditor of Spokane County.

Without waiving the foregoing motion and in the event the same is overruled, the complainant and petitioner, Investment and Securities Co. moves the court to set aside said decision and grant a new trial to the complainant and petitioner, Investment and Securities Co., upon the following grounds:

I.

Insufficiency of the evidence to justify the decision and that it is against the law.

II.

Error in law occurring at the trial and excepted to at the time by complainant and petitioner, Investment and Securities Co.

WITHERSPOON WITHER-
SPOON & KELLEY

By W. V. KELLEY

Attorneys for Petitioner and
Complainant, Investment and
Securties Co.

Copy received this 23 day of April, 1943.

LALLY

Attorney for Robbins

Copy received this 23rd day of Apr, 1943.

EDW. M. CONNELLY

H. ERICKSON

Attorneys for ———

[Endorsed]: Filed Apr. 23 1943. [189]

[Title of Court and Cause.]

COURT MINUTES (Journal 15, Page 945)
APRIL 1943 TERM MONDAY, APRIL 26, 1943

17th day

Court convened pursuant to adjournment, at 9:45
A.M. Present: Honorable Lewis B. Schwellenbach,
District Judge, A. A. LaFramboise, Clerk, Harvey

Erickson, Assistant U. S. Attorney, R. R. Isaacs,
Deputy U. S. Marshal,

PROCEEDINGS

* * * *

Now on this 26th day of April, 1943, this matter came on for hearing on motion of Investment and Securities Company for Judgment notwithstanding the decision or for new trial, and was argued by Mr. Wm. V. Kelley for the Investment & Securities Co. and by Harvey Erickson for Frank J. Kuhl, Collector of Internal Revenues and the United States of America. Motion Denied.

Plaintiff's proposed findings, refused.

As to Defendant's proposed findings, strike out "certificate of participation" in findings and conclusions. Add to Finding 5 beginning of fourth line—"The right to participate in the dividends to shareholders".

* * * *

Thereupon Court adjourned until tomorrow April 27th, 1943, at 10:00 a. m. [190]

[Title of Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter coming on for trial before the above entitled Court on this 23rd day of February, 1943, and the intervening plaintiff being represented by William V. Kelley of Witherspoon, Witherspoon

& Kelley, and the cross-defendant and interpleader, Charles P. Robbins being represented by Mr. Thomas A. E. Lally, and the defendant, Frank J. Kuhl, being represented by Harvey Erickson, Assistant United States Attorney, and the additional intervenor, United States of America being represented by Harvey Erickson, Assistant United States Attorney, and the supplemental defendants, Judson G. Rosebush and Barbara J. McNaughton Rosebush, being adjudged to be in default, and the Court having on March 31, 1943, rendered its opinion in the above entitled case, the Court makes the following:

FINDINGS OF FACT

I.

That the United States of America made an assessment for the calendar year of 1928 against Judson G. Rosebush in the Revenue Collection District of Wisconsin in the year 1934, in the amount of \$37,220.85, for income taxes for the year 1928. That immediately thereafter notices of the tax lien of the United States against Judson G. Rosebush were recorded with the Clerk of the United States District Court for the Eastern District of Wisconsin, at Milwaukee, and with the Register of Deeds for Outagamie County of Wisconsin. The notices of tax lien were recorded prior to the assignment of the supplemental defendant, Judson G. Rosebush, to the intervening plaintiff, Investment and Securities Company.

II.

That during the year 1937, the United States brought an action in the District Court, for the Eastern District of Wisconsin, against Judson G. Rosebush, a resident of Appleton, Wisconsin.

III.

That on November 26, 1941, a judgment was entered in the Eastern District of Wisconsin against Judson G. Rosebush in the sum of \$37,-220.85 plus costs.

IV.

That on November 27, 1941, the United States Attorney for the Eastern District of Wisconsin, caused a Writ of Execution to issue against the property of Judson G. Rosebush; that at the time of the issuance of the Writ of Execution the sum of \$4,250.00 was owing by the Shareholders' Agent, Charles P. Robbins, and since said time an additional sum of \$2,250.00, making a total of \$6,500.00 has become due and owing the said Judson G. Rosebush, as the result of his right to participate in the dividends of the Shareholders of The Exchange National Bank.

V.

That the Federal tax lien which attached against the said Judson G. Rosebush in the sum of \$37,220.85 during the year 1934, attached as a lien upon all the monies and property then in the hands of the said Judson G. Rosebush. The right to participate in the dividends of the Shareholders of

The Exchange National Bank of Spokane, Washington, was during the year 1934, and at all times thereafter, property of the said Judson G. Rosebush

VI.

That on July 27, 1937, Judson G. Rosebush and the Investment and Securities Company, intervening plaintiff herein, made and entered into an agreement referred to, whereby the said Judson G. Rosebush assigned all his right, title and interest to the Investment and Securities Company of certain monies due the said Judson G. Rosebush by the cross-defendant and interpleader, Charles P. Robbins, to the Investment and Securities Company, subject to the claims and the lien of the United States, by virtue of the income tax assessments duly filed in the State of Wisconsin.

VII.

That Thomas A. E. Lally, attorney for the cross-defendant and interpleader, is entitled to the sum of \$200.00 as a reasonable attorney's fee for his services in said case, and in addition thereto, is entitled to the sum of \$16.00 as court costs paid by him.

VIII.

That the Investment and Securities Company had actual notice of the claim of the United States to the right to participate in the dividends of the Shareholders of The Exchange National Bank, and had notice that the United States claimed a prior right and lien to all monies coming from Charles

P. Robbins, Shareholders' Agent of The Exchange National Bank, to the said Judson G. Rosebush, as a result of the liquidation of the said bank. [192]

IX.

That an additional dividend of an undetermined amount will be paid by Charles P. Robbins, Shareholders' Agent, upon the said right mentioned herein.

Dated this 28 day of April, 1943.

L. B. SCHWELLENBACH

District Judge

Presented by:

EDWARD M. CONNELLY

HARVEY ERICKSON

Assistant United States Attorney

From the foregoing Findings of Fact the Court make the following:

CONCLUSIONS OF LAW

I.

That the right of the intervening plaintiff, Investment and Securities Company, was junior to and inferior to the tax lien of the United States.

II.

The additional intervenor, United States of America, had a tax lien against the right to participate in the dividends of the Shareholders of The Exchange National Bank, which Judson G.

Rosebush assigned to the intervening plaintiff, Investment and Securities Company.

III.

The right to participate in the dividends of the Shareholders of The Exchange National Bank was a property right, although in February, 1934, it was unliquidated and the amount undetermined and belonged to Judson G. Rosebush, and the lien of the United States attached thereto in February, 1934.

IV.

The right to participate in the dividends of the Shareholders of The Exchange National Bank, was intangible personal property, and the lien of the United States attached thereto as a result of the United States filing its assessment list with the Collector of Internal Revenue, for the District of Wisconsin, and in filing a notice of the tax lien with the Clerk of Outagamie County, Wisconsin, where Judson G. Rosebush resided.

V.

That the United States shall be entitled to the sum of \$6,284.00, and that \$200.00 shall be awarded as attorney's fees and \$16.00 as court costs to Thomas A. E. Lally, attorney for the cross-defendant, Charles P. Robbins. [193]

VI.

That future payments covered by the right to participate in the dividends of the Shareholders of The Exchange National Bank, and payable to Jud-

son G. Rosebush, shall be paid to the additional intervenor, United States of America.

Dated this 28 day of April, 1943.

L. B. SCHWELLENBACH

District Judge

Presented by

HARVEY ERICKSON

Assistant United States Attorney

Copy received this 28th day of April, 1943, and approved as to Form.

WITHERSPOON WITHER-
SPOON & KELLEY

Attorneys for Investment and
Securities Company, Inter-
vening Plaintiff

[Endorsed]: Filed Apr 28 1943. [194]

In the United States District Court for the Eastern
District of Washington—Northern Division

No. 235

INVESTMENT AND SECURITIES COMPANY,
a corporation

Plaintiff,

vs.

CHARLES P. ROBBINS, Shareholders' Agent of
The Shareholders of the Exchange National
Bank of Spokane, Washington,
Cross-Defendant and Interpleader

vs.

FRANK J. KUHL, Collector of Internal Revenue
for Wisconsin,

Defendant

UNITED STATES OF AMERICA,
Additional Intervenor

vs.

JUDSON G. ROSEBUSH and BARBARA J.
McNAUGHTON ROSEBUSH, his wife,
Supplemental Defendants

AMENDED JUDGMENT

This matter coming on for hearing before the
above entitled Court on February 23, 1943, and a
pre-trial order having been entered in said case on
January 19, 1943, and the intervening plaintiff, In-

vestment and Securities Company, being represented by William V. Kelley of Witherspoon, Witherspoon & Kelley, and the cross-defendant and interpleader, Charles P. Robbins, Shareholders' Agent, being represented by Thomas A. E. Lally, and Frank J. Kuhl, Collector of Internal Revenue, defendant, and United States of America, additional intervenor, being represented by Harvey Erickson, Assistant United States Attorney, and the supplemental defendants, Judson G. Rosebush and Barbara J. McNaughton Rosebush, his wife, being adjudged in default, and the Court having on March 31, 1943, issued its Memorandum Opinion in said cause, and the Court having entered its Findings of Fact and Conclusions of Law, it is therefore

Ordered, Adjudged and Decreed that the additional intervenor, United States of America, is entitled to the sum of \$6,284.00 in the hands of the Clerk of the United States District Court for the Eastern District of Washington, and that Thomas A. E. Lally, Attorney for the Shareholders' Agent, shall be awarded the sum of \$200.00 as attorney's fees and \$16.00 as Court costs advanced by him, and the Clerk is directed to distribute same in the above amounts to the respective parties out of the \$6500.00 on deposit, and that any future payments resulting from the right to participate in the dividends of the Shareholders of The Exchange National Bank, and payable to the said Judson G. Rosebush, shall be paid to the additional intervenor, United States of America.

Approved, Clerk is directed to enter.

Dated this 30th day of April, 1943.

L. B. SCHWELLENBACH

District Judge.

Presented by

HARVEY ERICKSON

Assistant United States Attorney

Copy received this 30th day of April, 1943, and approved as to Form.

THOS. A. E. LALLY

Atty. for Robbins

W. V. KELLEY

Attorneys for Investment and
Securities Company, Inter-
vening Plaintiff

[Endorsed]: Filed Apr 30 1943. [195]

[Title of Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the Investment and Securities Company, a corporation, complainant in intervention and petitioner for declaratory relief, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action. Amended judgment after trial by the Court was entered in this action on April 30, 1943.

Dated this 13th day of July, 1943.

WITHERSPOON WITHER-
SPOON & KELLEY
WILLIAM V. KELLEY

Attorneys for Petitioner and
Complainant, Investment
and Securities Company

Mailed copy to Thos. A. E. Lally & Edw. M.
Connelly, July 14, 1943.

A. A. LaFRAMBOISE,
Clerk

[Endorsed]: Filed Jul 13 1943. [196]

No. 76 604

\$250.00

[Title of Court and Cause.]

APPEAL BOND

Know All Men By These Presents, That we, Investment and Securities Company, a corporation, as Principal, and the United States Fidelity and Guaranty Company, a corporation organized under the laws of the State of Maryland and authorized to transact the business of surety in the State of Washington, as Surety, are held and firmly bound unto United States of America in the just and full sum of Two Hundred Fifty and no/100ths (\$250.00), good and lawful money of the United States of America, well and truly to be paid, and for the true payment of which we hereby bind ourselves, our and each of our heirs, executors, administra-

tors and successors, jointly and severally, firmly by these presents.

Witness our hands and seals this 13th day of July, A. D. 1943.

The Condition of the Above Obligation Is Such That, Whereas the above named Plaintiff has appealed to the Circuit Court of Appeals for the Ninth Circuit from the final judgment of the District Court of the United States for the Eastern District of Washington, Northern Division, entered against it in the above entitled action on the 30th day of April, 1943; and

Whereas, the above named principal has heretofore given due and proper notice that it will appeal from said decision and judgment of the District Court of the United States for the Eastern District of Washington, Northern Division;

Now, if the said principal, Investment and Securities Company, a corporation, shall pay to the defendants above named, all costs and damages that may be awarded against it on the appeal, or on the dismissal thereof not exceeding Two Hundred Fifty and no/100ths Dollars (\$250.00), then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

[Seal]

INVESTMENT AND SECUR-
ITIES COMPANY

By GEO. L. KIMMEL

Vice Pres.

[Seal] UNITED STATES FIDELITY
AND GUARANTY COM-
PANY

By WILL A. KOMMERS
Attorney-in-Fact

[Endorsed]: Filed Jul 13 1943. [197]

United States Fidelity and Guaranty Company
Baltimore - Maryland

No. 76623

\$7,000.00

[Title of Court and Cause.]

SUPERSEDEAS BOND

Know All Men By These Presents, That we, Investment and Securities Company, a corporation, as Principal, and the United States Fidelity and Guaranty Company, a corporation organized under the laws of the State of Maryland and authorized to transact the business of surety in the State of Washington, as Surety, are held and firmly bound unto the United States of America in the just and full sum of Seven Thousand and no/100ths Dollars (\$7,000.00) good and lawful money of the United States of America, well and truly to be paid, and for the true payment of which we hereby bind ourselves, our and each of our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Witness our hands and seals this 16th day of August, A. D. 1943.

Whereas, lately at the District Court of the United States for the Eastern District of Washington, Northern Division, in an action pending in said Court between Investment and Securities Company, a corporation, Intervening Plaintiff, and Charles P. Robbins, Shareholders Agent of the Shareholders of The Exchange National Bank of Spokane, Washington, Cross-Defendant and Interpleader; Frank J. Kuhl, Collector of Internal Revenue for Wisconsin, Defendant; United States of America, Additional Intervenor; Judson G. Rosebush and Barbara J. McNaughton Rosebush, his wife, Supplemental Defendants, a judgment was entered decreeing that the Additional Intervenor, the United States of America, is entitled to the sum of Six Thousand Two Hundred Eighty Four and no/100 Dollars (\$6,284.00), paid into the hands of the Clerk of the District Court of the United States for the Eastern District of Washington, Northern Division, with interest thereon at the rate of six percent per annum from the 30th day of April, 1943, and

Whereas, said Investment and Securities Company, a corporation, Intervening Plaintiff is prosecuting an appeal to the United States Circuit Court of Appeals to reverse the judgment in the above entitled action, given [198] and entered by said District Court of the United States for the Eastern District of Washington, Northern Division, on the 30th day of April, 1943.

Now, the condition of this obligation is such that

if the said Investment and Securities Company, a corporation, shall prosecute said appeal to effect and answer all damages and costs, and satisfy said judgment if it shall fail to make good said appeal, then the above obligation to be void; otherwise to remain in full force and virtue.

[Corporate Seal]

INVESTMENT AND SE-
CURITIES COMPANY

By L. A. STILSON

Secretary

[Corporate Seal]

UNITED STATES FIDELITY
AND GUARANTY COM-
PANY

By WILL A. KOMMERS,

Attorney-in-Fact

Approved August 18, 1943.

L. B. SCHWELLENBACH

U. S. District Judge

[Endorsed]: Filed Aug 18, 1943. [199]

[Title of Court and Cause.]

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY IN
THIS APPEAL

I.

The Federal tax lien against Rosebush arose February 18, 1934, when the assessment list relative to

his 1928 income taxes was received by the Collector of Internal Revenue at Milwaukee, Wisconsin.

II.

As a result of the agreement of July 27, 1937, by the terms of which Rosebush for additional value then received assigned to Investment and Securities Company, as security for prior indebtedness to it in excess of \$76,000, any recovery which might be made on the assessment he had paid on stock of the Exchange National Bank of Spokane, the Investment and Securities Company came within the protection of Section 3186 of Revised Statutes as amended by Section 613 of the Revenue Act of 1928, 26 USCA (Internal Revenue Acts), page 461, which provided in part as to the Federal tax lien

“(b) Such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice thereof has been filed by the collector * * * ”

III.

This statute imposing a lien for Federal income taxes did not provide for any special priority as between such liens and other liens (such as the lien of Investment and Securities Company) on the property of the taxpayer Rosebush, but did provide

“(b) Such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice thereof has been filed by the Collector—

“(1) in accordance with the law of the State or Territory in which the property sub-

ject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or

“(2) in the office of the clerk of the United States District Court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice
* * * ”

(Section 3186 of the Revised Statutes as amended by Section 613 [200] of the Revenue Act of 1928, 26 USCA (Internal Revenue Acts), page 461.)

IV.

Where the mortgage or other lien attached to the property of the taxpayer before the filing of notice of the Federal tax lien and the mortgagee or other lien holder was within the class intended to be protected by the foregoing provision, such mortgagee or other lien holder was entitled to priority over the tax lien.

V.

Notice of the lien was never filed by the Collector for Wisconsin in any proper office in the State of Washington, although the Federal statutes provided (1) for a summary method for the enforcement of tax liens on both personal and real property by distraint and sale and made provision for distraint by a collector outside of his district (26 USCA § 3713, 26 USCA § 3678); or (2) for a suit to recover taxes in the name of the United States in any proper form of action before any Federal District Court of the United States, for the district

within which the liability for such taxes is incurred or where the party from whom such tax is due resides at the time of the commencement of said action (53 Stat. 460, 26 USCA § 3744).

VI.

The property subject to the lien was situated in Washington; The agreement of July 27, 1937, gave the Investment and Securities Company a lien on future acquired personal property of Rosebush in Washington in the form of any recovery on the assessment of his stock in the Exchange National Bank of Spokane, Washington.

VII.

Regardless of whether Investment and Securities Company came within the protection of the Revenue Act of 1928 when the agreement of July 27, 1937, was executed, nevertheless the claim for tax lien on the recovery on the assessment of the Exchange National Bank stock owned by Rosebush, which was never made in Washington until a writ of Fieri Facies was issued in Decemer, 1941, by the Federal District Court for the Eastern District of Wisconsin, to [201] be served on the Shareholders Agent of said Bank in Washington, was barred by the Statute of Limitations, as set forth in Internal Revenue Code, Section 276 (c), Title 26 USCA, Section 276 (c), which provides

“Collection after assessment. Where the assessment of any income tax imposed by this chapter has been made within the period of limitation properly applicable thereto, such tax

may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such six-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. 53 Stat. 87."

WITHERSPOON, WITHER-
SPOON & KELLEY
WILLIAM V. KELLEY

Attorneys for Complainant
and Petitioner

Service of the foregoing statement of points upon which appellant intends to rely on appeal, by service of a copy thereof, by each of the undersigned is hereby accepted this 13th day of July, 1943.

THOS. A. E. LALLY

Attorney for Charles P. Rob-
bins, Shareholders Agent,
Cross-Defendant and Inter-
pleader.

EDWARD M. CONNELLY &
HARVEY ERICKSON

Attorneys for Defendant
Frank J. Kuhl and Inter-
venor U. S. A.

[Title of Court and Cause.]

DESIGNATION OF PORTIONS OF RECORD
TO BE CERTIFIED FOR APPEAL PURPOSES

Comes now Investment and Securities Company, a corporation, complainant in intervention and petitioner for declaratory relief, and hereby designates the following parts of the record and proceedings to be included in the record on appeal with the U. S. Circuit Court of Appeals for the Ninth Circuit, to-wit:

1. Complaint for Intervention of Charles P. Robbins.

2. Special Appearance and Plea to Quash for Lack of Jurisdiction by United States.

3. Motion to File Complaint in Intervention and Petition for Declaratory Relief.

4. Notice of Argument on Motion to Intervene.

5. Authorities of the United States in Support of Motion for Special Appearance and Plea to Quash for Lack of Jurisdiction.

6. Complaint in Intervention and Petition for Declaratory Relief of Investment and Securities Company.

7. Order denying Motion to Quash.

8. Order granting leave to Investment and Securities Company to intervene.

9. Order for Intervention of United States of America.

10. Answer of Cross-Defendant Charles P. Robbins.

11. Answer of defendant Frank J. Kuhl, Collector of Internal Revenue for Wisconsin.

12. Answer in Intervention of the United States of America.

13. Reply to Answer of Cross-Defendant Charles P. Robbins.

14. Motion to Make More Definite and Certain or for a Bill of Particulars of complainant and petitioner as to answer of the United States.

15. Motion to Strike of complainant and petitioner as to Answer in Intervention of the United States.

16. Motion to Strike of complainant and petitioner as to Answer of defendant Frank J. Kuhl.

17. Reply of Charles P. Robbins, Shareholders Agent, to Answer of United States of America.

18. Notice that Charles P. Robbins, Shareholders Agent, has paid Additional Sums into the Court Registry.

19. Reply of Charles P. Robbins to Answer of Frank J. Kuhl.

20. Motion for Summary Judgment of United States of America. [203]

21. Statement of Authorities on Intervenor's (United States of America) Motion for Summary Judgment.

22. Order Denying Motion to Make More Definite and Certain and for a pre-trial conference.

23. Petition of Charles P. Robbins to Have Supplemental Complaint Filed and that Process issue to Judson G. Rosebush and Barbara J. McNaughton Rosebush.

24. Supplemental Petition and Complaint of Charles P. Robbins.

25. Order Granting Petition of Charles P. Robbins and ordering issue of process.

26. Motion to Vacate Order Joining Judson G. Rosebush and Barbara J. McNaughton Rosebush as Defendants.

27. Affidavit resistance of Charles P. Robbins to motion to vacate joinder of defendants Rosebush.

28. Order Denying Motion of United States of America to vacate joinder of defendants Rosebush.

29. Decree against Supplemental Defendants, Judson G. Rosebush and Barbara J. McNaughton Rosebush.

30. Order in re Pre-Trial Hearing.

31. Reply to Answer of Defendant Frank J. Kuhl.

32. Reply of Investment and Securities Company to Answer in Intervention of the United States of America.

33. Stipulation to amend replies of complainant and petitioner.

34. Amended Reply to Answer in Intervention of the United States of America.

35. Amended Reply to Answer of Defendant Frank J. Kuhl.

36. Defendants' Citation of Authorities.

37. Authorities in Behalf of Investment and Securities Company in form of letter to Honorable L. B. Schwellenbach under date of February 23, 1943.

38. Reporter's Transcript of all Testimony, Evi-

dence and Proceedings at the Trial, including the Rulings of the Court on the Admission and Exclusion of Testimony.

39. Opinion of the Court filed March 31, 1943.

40. Alternative Motion for Judgment Notwithstanding Decision and for a New Trial.

41. Findings of Fact and Conclusions of Law filed April 28, 1943.

42. Amended Judgment filed April 30, 1943.

43. Notice of Appeal. [204]

44. Bond on Appeal.

45. Court Journal 15, Page 945.

The Clerk of the above entitled court is hereby directed to prepare, certify and transmit to said Circuit Court of Appeals the above designated Record on Appeal.

Dated this 13th day of July, 1943.

WITHERSPOON, WITHER-
SPOON & KELLEY
WILLIAM V. KELLEY

Attorneys for Complainant
and Petitioner Investment
and Securities Company.

Copy received July 13, 1943.

HARVEY ERICKSON

Asst. U. S. Atty. attorney for
Frank J. Kuhl & U. S. of
America Additional Inter-
venor.

THOS. A. E. LALLY

Atty for C. P. Robbins.

[Endorsed]: Filed July 17 1943. [205]

CLERK'S CERTIFICATE TO TRANSCRIPT
OF RECORD

United States of America

Eastern District of Washington—ss.

I, A. A. LaFramboise, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify the foregoing type-written pages numbered from 1 to 205 inclusive, to be a full, true and correct copy of so much of the record, papers and proceedings in the above entitled cause as are necessary to the hearing of the appeal therein in the United States Circuit Court of Appeals as called for by the Designation of Portions of Record to be certified for Appeal Purposes, (except items numbered 4, 5, 21, 36, and 37 which are not a part of the Clerk's record in this cause), as the same remain on file and of record in the office of the Clerk of said District Court, and that the same constitutes the record on appeal of Investment and Securities Company from the final judgment of the District Court of the United States for the Eastern District of Washington to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, at San Francisco, California.

I further certify that the fees of the Clerk of this Court for preparing and certifying the foregoing record amount to the sum of \$73.70 and that the same has been paid in full by Witherspoon, Witherspoon and Kelley, Attorneys for Appellant.

In Witness Whereof, I have hereunto subscribed

my name and affixed the seal of the aforesaid District Court, this 18th day of August, 1943.

[Seal]

A. A. LaFRAMBOISE

Clerk of the United States
District Court for the East-
ern District of Washington.

[206]

[Endorsed]: No. 10531. United States Circuit Court of Appeals for the Ninth Circuit. Investment and Securities Company, a corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Eastern District of Washington, Northern Division.

Filed August 21, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
Ninth Circuit

No. 10531

INVESTMENT AND SECURITIES CO., a corporation,

Intervening plaintiff,
vs.

CHARLES P. ROBBINS, Shareholders Agent of
the Shareholders of The Exchange National
Bank of Spokane, Washington
Cross-defendant and Interpleader,

vs.

FRANK J. KUHL, Collector of Internal Revenue
for Wisconsin,

Defendant,

vs.

UNITED STATES OF AMERICA,
Additional Intervenor,

vs.

JUDSON G. ROSEBUSH and BARBARA J.
McNAUGHTON ROSEBUSH, his wife,
Supplemental Defendants.

DESIGNATION OF POINTS AND THE
REQUEST FOR PRINTING OF RECORD

I.

Appellant hereby adopts and designates for consideration on this appeal, in lieu of a separate state-

ment, the designation of points on which it intends to rely heretofore designated by appellant and filed in the District Court.

II.

Appellant deems consideration by the court of the entire record, certified to this court by the clerk of the District Court, necessary on this appeal to a proper understanding of the questions presented and hereby requests that same be printed, excepting and omitting formal parts of pleadings and other court papers.

WILLIAM V. KELLEY
WITHERSPOON, WITHER-
SPOON & KELLEY

Attorneys for Investment and
Securities Co., Intervening
Plaintiff.

Service of the foregoing designation of points relied on and request for printing, by receipt of a copy thereof, is hereby accepted this 30th day of August, 1943.

HARVEY ERICKSON

rh

Assistant United States At-
torney, Attorney for de-
fendant Frank J. Kuhl and
United States of America,
additional invervenor.

Service of the foregoing designation of points relied on and request for printing, by receipt of a copy thereof, is hereby accepted this 30th day of August, 1943.

THOS. A. E. LALLY

Attorney for Cross-defendant
and Interpleader.

[Endorsed]: Filed Sept. 1, 1943. Paul P.
O'Brien, Clerk.

